

CITY OF SAN ANTONIO

AVIATION DEPARTMENT



REQUEST FOR COMPETITIVE PROPOSALS ("RFP")

for

THE CAR RENTAL CONCESSION at SAN ANTONIO INTERNATIONAL AIRPORT

July 15, 2003

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I. REQUEST FOR COMPETITIVE PROPOSALS

The City of San Antonio, Texas (hereinafter referred to as the "City"), hereby solicits proposals for the operation of one Car Rental Concession at the San Antonio International Airport (hereby referred to as the "Airport"). Desired qualifications include car rental operating experience with the use of an advertising program and reservation system. However, if a Respondent does not possess these qualifications, it must submit to the City a Business Plan showing that it can reasonably anticipate a successful car rental operation absent such direct experience.

II. GENERAL DESCRIPTION OF THE CONCESSION

The City owns and operates two airport terminals with approximately 545,000 square feet of floor space. Eight car rental concessionaires initiated their contracts on July 1, 2003. This Request for Proposals seeks to award an additional contract that includes the non-exclusive right and obligation to operate a Car Rental Concession on the premises in both terminal buildings. Of the acceptable proposals received, the City expects to award a maximum of one contract with similar terms and conditions as those of the contracts starting on July 1, 2003 (please see Section IX for the evaluation criteria).

All Airport car rental concessionaires are reranked on an annual basis. Said reranking will be based upon the ranking criteria set forth in Exhibit 5 of the Agreement Specification set forth in Attachment 10 hereto.

The sites listed below will be available for the Car Rental Concession at the Airport, split between the two connecting terminal buildings. Actual locations for all car rental concessions are shown on Exhibits 1 and 2 of Attachment 10.

<u>Terminal 1 Site</u>	<u>Estimated Square Footage</u>
Site F	137

<u>Terminal 2 Site</u>	<u>Estimated Square Footage</u>
Site A	221

Actual enplanements and car rental gross revenues are listed below for calendar years 1996 through 2002. Please note that the City does not guarantee the attainment of this level of passenger volume or passenger distribution, and any conclusions reached from these figures are at the risk of the prospective concessionaire.

Year	Enplanements	Deplanements	Car Rental Gross Revenues
1996	3,509,363	3,489,292	\$47,934,911
1997	3,431,890	3,409,184	\$51,436,783
1998	3,444,747	3,398,844	\$57,854,840
1999	3,475,493	3,447,059	\$60,247,476
2000	3,646,025	3,657,180	\$62,609,328
2001	3,444,437	3,445,237	\$59,242,898
2002	3,296,437	3,297,272	\$58,127,326

III. TERM OF CONTRACT

The Car Rental Concession will commence on October 1, 2003 and will end on June 30, 2008. However, the City reserves the right to terminate the Concession Agreement executed pursuant to this Request for Proposal upon 180 days advanced written notice. The right to terminate would be exercised once an RFP for new contracts is issued.

IV. PRE-PROPOSAL CONFERENCE

A Pre-Proposal Conference will be held in the Terminal 1 Mezzanine Conference Room of San Antonio International Airport located at 9800 Airport Boulevard, San Antonio, TX on August 8, 2003 at 10:00 a.m. At that time, interested parties may ask questions pertaining to the proposal. Any amendments or revisions resulting from the conference will be developed as expeditiously as possible and will be forwarded to all parties requesting this initial package.

V. PROPOSAL REQUIREMENTS

Respondent's Proposal shall include the following items in the following sequence:

- A. **PROPOSAL SECURITY**: A cashier's or certified check, an irrevocable letter of credit drawn upon a bank and in form and content satisfactory to City or a Proposal Bond, in the form provided in Attachment 1, with surety or sureties satisfactory to the Director of Aviation, must be submitted in conjunction with the proposal in the amount of ten thousand dollars (\$10,000) made payable to the Treasurer of the City of San Antonio, Texas.

- B. PROPOSED PRIVILEGE FEE: The City requires that selected Respondents pay a fee for the privilege of conducting business at the Airport. The fee shall be the greater of 10% of Concessionaire's gross sales or a minimum annual guarantee. Each Respondent shall state the minimum annual guarantee it proposes to pay to the City for each year that Respondent operates at the Airport under a contract awarded pursuant to this RFP. (Attachment 2)
- C. RESPONDENT QUALIFICATION GENERAL QUESTIONNAIRE: Completed Respondent Qualification General Questionnaire. (Attachment 3) Submit Business Plan if applicable.
- D. DISCRETIONARY CONTRACTS DISCLOSURE: Completed Discretionary Contracts Disclosure Form. (Attachment 4) If Respondent is proposing as a team or joint venture, then all parties to that team or joint venture shall complete and return this form with the proposal.
- E. LITIGATION DISCLOSURE: Completed Litigation Disclosure Form. (Attachment 5) If Respondent is proposing as a team or joint venture, then all parties to that team or joint venture shall complete and return this form with the proposal.
- F. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) POLICY REQUIREMENTS. Completed SBEDA forms (Attachment 6).
- G. SAN ANTONIO INTERNATIONAL AIRPORT – FEDERAL DBE PROGRAM, 49 CFR PARTS 23 AND 26 REQUIREMENTS. Completed Federal DBE Program forms (Attachment 7).
- H. OPERATION, MANAGEMENT, AND MARKETING PLANS – Please attach.
- I. BROCHURES: Include brochures and other relevant information about Respondent you wish the City to consider in its selection.
- J. ANNUAL FINANCIAL STATEMENT: Respondent shall submit to the City a Balance Sheet and Income Statement prepared in accordance with good accounting practices by an independent Certified Public Accountant, reflecting Respondent's most recent annual operating period together with a copy of Respondent's annual report, if available. (Please Attach).
- K. SIGNATURE PAGE: Respondent must complete and include Signature Page with proposal. The Signature Page must be signed by a person, or persons, authorized to bind the entity, or entities, submitting the proposal. Proposals signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority. (Attachment 11)
- L. PROPOSAL CHECKLIST: Completed proposal checklist. (Attachment 12)

Respondent is expected to examine this RFP carefully, understand the terms and conditions for providing the services listed herein and respond completely. FAILURE TO COMPLETE AND PROVIDE ANY OF THESE DOCUMENTS MAY RESULT IN THE RESPONDENT'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.

VI. AMENDMENTS TO RFP

Changes or amendments to this RFP may be posted on the City's website at <http://www.sanantonio.gov/rfp/>. It is Respondent's responsibility to review this site and ascertain whether any amendments have been made prior to submission of a proposal. Amendments will be forwarded to all parties requesting this initial package

VII. SUBMISSION OF PROPOSALS

- A. Respondent shall submit 10 copies of the Proposal, the original signed in ink, in a sealed package, clearly marked on the front of the package "Proposal for the Car Rental Concession at San Antonio International Airport, to be opened at 2:00 p.m., September 5, 2003." All Proposals must be received in the City Clerk's office no later than 2 p.m. central time, September 5, 2003 at the address below. Any Proposal received after this time shall not be considered and will be returned unopened.

Mailing Address:

City Clerk's Office, Attn: Aviation Department
P.O. Box 839966,
San Antonio, Texas 78283-3966

Physical Address:

City Clerk's Office, Attn: Aviation Department
100 Military Plaza
2nd floor, City Hall
San Antonio, Texas 78205.

Proposals sent by facsimile or email will not be accepted.

- B. Proposal Format: Each proposal submitted in a sealed legal size envelope. Each proposal must include the sections and attachments in the sequence listed in the Proposal Requirements Section, and each section and attachment must be indexed and divided by tabs and indexed in a Table of Contents page. Failure to meet the above conditions may result in disqualification of the proposal.

- C. Respondents who submit responses to this RFP shall correctly reveal, disclose, and state the true and correct name of the individual, proprietorship, corporation, and /or partnership (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any). No nick-names, abbreviations (unless part of the legal title), shortened or short-hand, or local "handles" will be accepted in lieu of the full, true and correct legal name of the entity. These names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. Corporate Respondents and limited liability company Respondents shall include the 11-digit Comptroller's Taxpayer Number on the signature page of the Proposal.

If an entity is found to have incorrectly or incompletely stated its name or failed to fully reveal its identity on the signature page of its proposal, the Director of Aviation shall have the discretion, at any point in the contracting process, to suspend consideration of the proposal.

- D. All provisions in Respondent's proposal shall remain valid for one hundred eighty (180) days following the deadline date for submissions or, if a proposal is accepted, throughout the entire term of the contract.
- E. All proposals become the property of the City upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted on the page(s) where confidential information is contained; however, the City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a Court order.
- F. Any cost or expense incurred by the Respondent that is associated with the preparation of the Proposal, the Pre-Proposal conference, if any, or during any phase of the selection process, shall be borne solely by Respondent.

VIII. RESTRICTIONS ON COMMUNICATION

Once the RFP has been released, Respondents are prohibited from communicating with City staff or City officials regarding the RFP or Proposals, with the following exceptions:

- A. Verbal questions and explanations will be permitted only at the Pre-Proposal Conference described on Section IV of this RFP. Questions concerning this RFP shall be directed, in writing only, to the Aviation Department, Attn: Carol Tucker, Properties & Business Development Manager, at 9800 Airport Boulevard, San Antonio, TX 78216. Electronic submissions by facsimile or e-mail will be accepted at (210) 207-3500 and ctucker@sanantonio.gov. No inquiries or questions will be answered if received after 4 P.M.

on August 13, 2003, to allow ample time for distribution of answers and/or amendments to this RFP.

- B. Respondent shall not contact City employees nor Officers before an award has been made, except as set out herein. Violation of this provision by Respondent or his agent may lead to disqualification of his proposal from consideration.
- C. The City reserves the right to contact any Respondent for clarification after responses are opened if deemed desirable by City.

IX. EVALUATION CRITERIA

The City will conduct a comprehensive, fair and impartial evaluation of all Proposals received in response to this RFP. The City may appoint a selection committee to perform the evaluation. Each Proposal will be analyzed to determine overall responsiveness and qualifications under the RFP. Criteria to be evaluated may include the items listed below.

Of the acceptable proposals received, the contract will be awarded to the highest-ranking Respondent. Final approval of a selected Respondent is subject to the action of the City of San Antonio City Council.

Evaluation criteria:

- A. Proposed Minimum Annual Guarantee (30%)
- B. Financial integrity of the Respondent (15%)
- C. Experience of the Respondent (20%)
- D. Operation, Management, and Marketing Plans (15%)
- E. Small Business Economic Development Advocacy Program (SBEDA) (20%):
 - 1. A maximum of ten percentage (10) points for Local Business Enterprises (LBEs).

Prime contractors who have a local branch office will receive six percent (6%) of the selection points.

Non-local prime contractors can receive points for subcontracting with local businesses proportional to the amount of work performed by those local subcontractors (i.e. – 50% to local = 5 points).

- 2. A maximum of five percentage (5%) points for companies designated as Historically Underutilized Enterprises (HUEs).

Prime contractors who subcontract with HUEs can receive points proportional to amount of work performed by those HUEs(i.e. – 50% to HUEs = 2.5 points).

HUEs must be certified by the City's certifying agency or approved by the Director of Economic Development or designee.

3. A maximum of five percentage (5%) points for Prime Contractor compliance with the Small Business Economic Development Advocacy (SBEDA) policy:
 - i. One percent (1%) for submission/approval of the Good Faith Effort Plan.
 - ii. One percent (1%) for meeting/exceeding the MBE goal.
 - iii. One percent (1%) for meeting/exceeding the WBE goal.
 - iv. One percent (1%) for meeting/exceeding the AABE goal.
 - v. One percent (1%) for meeting/exceeding the SBE goal.

X. AWARD OF CONTRACT AND RESERVATION OF RIGHTS

- A. City reserves the right to award one or no contract(s) in response to this RFP.
- B. The Contract, if awarded, will be awarded to the Respondent(s) whose Proposal(s) is deemed most advantageous to City, as determined by the selection committee, upon approval of the City Council.
- C. City may accept any Proposal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFP on the part of City. However, final selection of a Respondent is subject to City Council approval.
- D. City reserves the right to reject any or all proposals received in response to this RFP, and to waive informalities and irregularities in the proposals received. City also reserves the right to terminate this RFP, and reissue a subsequent solicitation, and/or remedy technical errors in the RFP process.
- E. City will require the selected Respondent(s) to execute the contract in substantially the form as attached with the City, prior to City Council award. Contract documents are not binding on City until approved by the City Attorney.
- F. This RFP does not commit City to enter into a Contract, award any services related to this RFP, nor does it obligate City to pay any costs incurred in preparation or submission of a proposal or in anticipation of a contract.
- G. If selected, Respondent will be required to comply with the Insurance and Indemnity Requirements established herein.

- H. Conflicts of Interest. Respondent acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a “prohibited financial interest” in a contract with City or in the sale to City of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: the City officer or employee; his parent; child or spouse; a business entity in which he or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- I. Respondent is required to warrant and certify that it, its officers, employees and agents are neither officers nor employees of the City, as defined in Part B, Section 10 of the City’s Ethics Code. (Discretionary Contracts Disclosure – Attachment 4)
- J. Independent Contractor. Respondent agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, is (are) and shall be deemed to be an independent contractor(s), responsible for its (their) respective acts or omissions, and that City shall in no way be responsible for Respondent’s actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.

XI. SCHEDULE OF EVENTS

Following is a list of **projected dates** with respect to this RFP:

RFP Solicitation Period	July 15 – September 5, 2003
Pre-Proposal Conference	August 8, 2003
Written Questions Due	August 13, 2003
Proposals Due	September 5, 2003
Start of Contract	October 1, 2003

ATTACHMENT 1

PROPOSAL BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned

As Principal, and

As Surety, a corporation chartered and existing under the laws of the State of _____, and fully authorized to do business in the State of Texas, are hereby held and firmly bound unto City of San Antonio, San Antonio Texas, as Owner in the sum of

good and lawful money of the United States of America, to be paid upon demand to the City of San Antonio, San Antonio, Texas, to which payment well and truly made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Signed this _____ day of _____, 2003.

The condition of the above obligation is such that whereas the Principal has submitted to City of San Antonio a certain Proposal, attached hereto and hereby made a part hereof, to enter into a contract in writing, for operation of Car Rental Concession at San Antonio International Airport.

NOW, THEREFORE,

- a. If said Proposal shall be rejected, or in the alternate
- b. If said Proposal shall be accepted and the Principal shall, within thirty (30) calendar days after the Award of the Contract, execute and deliver such contract and shall furnish sufficient and satisfactory bonds for his faithful performance of said contract, and shall in all other respects perform the agreement created by the acceptance of said Proposal, then this obligation shall be void; otherwise the same shall remain in force and effect, it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation has herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the City accepts such Proposal; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Principal

By:_____

Surety

By:_____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the Secretary of the Corporation named as Principal in the within bond; that _____, who signed the said bond of said Corporation is the President of said Corporation; that I know his signature, and his signature hereto is genuine; and that said bond was duly signed, sealed, and attested for in behalf of said Corporation by authority of its governing body.

(Corporate Seal)

ATTACHMENT 2

PRIVILEGE FEE

Set forth in the blank provided, the minimum annual guarantee you will pay the City each year during the term of this Agreement if selected. These fees shall be incorporated verbatim into the Concession Agreement.

Year	Percent of Gross	Minimum Annual Guarantee
1*	10%	\$_____
2	10%	same as above
3	10%	same as above
4	10%	same as above
5	10%	same as above

*Year 1 will be prorated since the first contract year will be shorter than 12 months.

ATTACHMENT 3

RESPONDENT QUALIFICATION GENERAL QUESTIONNAIRE

1. Name/Name of Agency/Company: _____
2. Address: _____

3. Telephone/FAX: _____
4. Does your Company anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months that may affect the organization's ability to carry out its proposal?
Yes____ No____
5. Is your Company authorized and/or licensed to do business in Texas?
Yes____ No____
6. Where is the Company's corporate headquarters located? _____
7. a. Does the Company have an office located in San Antonio, Texas?
Yes____ No____

b. If the answer to the previous question is "yes", how long has the Company conducted business from its San Antonio office?

____ (years) ____ (months)

c. State the number of full-time employees at the San Antonio office. _____
8. a. If the Company does not have a San Antonio office, does the Company have an office located in Bexar County, Texas?
Yes____ No____

b. If the answer to the previous question is yes, how long has the Company conducted business from its Bexar County office?

____ (years) ____ (months)

c. State the number of full-time employees at the Bexar County office. _____

9. Has the Company or any of its principals been debarred or suspended from contracting with any public entity? Yes____ No____

If yes, identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension. _____

10. Indicate person whom the City may contact concerning your proposal or setting dates for meetings.

Name: _____

Address: _____

Telephone: _____

FAX: _____

Email: _____

11. Surety Information

Have you or the Company ever had a bond or surety canceled or forfeited? Yes () No ().
If yes, state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture. _____

12. Bankruptcy Information

Have you or the Company ever been declared bankrupt or filed for protection from creditors under state or federal proceedings? Yes () No ()
If yes, state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets. _____

13. Provide any other names under which your business has operated within the last 10 years.

14. Provide the continuous number of years engaged in the Car Rental business.

If Respondent does not possess direct experience in airport Car Rental business, please submit a Business Plan showing that it can reasonably anticipate a successful operation. The Plan must address the Respondent's experience in the

management and operation of a similar Car Rental business.

15. Have any agreements held by Respondent for the operation of a Car Rental contract ever been cancelled for cause? Yes(_____) No (______). If yes, give details.

16. FINANCIAL REFERENCES

List four (4) persons or firms with whom you have conducted significant financial transactions during the past three (3) years. If firms are used, give the name of the department and/or person who may be contacted.

REFERENCE NO. 1 - Financial Institution

NAME: _____

FIRM: _____

TITLE: _____

ADDRESS: _____

TELEPHONE: _____

REFERENCE NO. 2 - Financial Institution

NAME: _____

FIRM: _____

TITLE: _____

ADDRESS: _____

TELEPHONE: _____

REFERENCE NO. 3 - Other

NAME: _____

FIRM: _____

TITLE: _____

ADDRESS: _____

TELEPHONE: _____

REFERENCE NO. 4 - Other

NAME: _____

FIRM: _____

TITLE: _____

ADDRESS: _____

TELEPHONE: _____

17. OPERATIONAL REFERENCES*

List persons or businesses who have knowledge of your ability to operate a Car Rental concession including the current locations upon which Respondent operates a Car Rental Concession or business.

REFERENCE NO. 1

NAME: _____

FIRM: _____

TITLE: _____

ADDRESS: _____

TELEPHONE: _____

NATURE OF ASSOCIATION: _____

REFERENCE NO. 2

NAME: _____

FIRM: _____

TITLE: _____

ADDRESS: _____

TELEPHONE: _____

NATURE OF ASSOCIATION: _____

REFERENCE No. 3

NAME: _____

FIRM: _____

TITLE: _____

ADDRESS: _____

TELEPHONE: _____

NATURE OF ASSOCIATION: _____

* If Respondent has no previous experience in operating a car rental concession, a Business Plan showing that Respondent can reasonably anticipate a successful car rental operation must be submitted.

ATTACHMENT 4

DISCRETIONARY CONTRACTS DISCLOSURE FORM

City of San Antonio

Discretionary Contracts Disclosure*

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.*

This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

(3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

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Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Signature:	Title: Company:	Date:

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

ATTACHMENT 5
LITIGATION DISCLOSURE FORM

LITIGATION DISCLOSURE

Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Circle One

YES

NO

2. Have you or any member of your Firm or Team been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Circle One

YES

NO

3. Have you or any member of your Firm or Team been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Circle One

YES

NO

If you have answered “Yes” to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

ATTACHMENT 6

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

For Use with Contracts Over \$200,000

1. **Small Business Participation**

Pursuant to Ordinance No. 96754, it is the policy of the City of San Antonio to involve Small, Minority, Women and African-American Owned Business Enterprises (S/M/W/AABE) to the greatest extent feasible in the City's discretionary contracts. The intent and purpose of the policy is to ensure that S/M/W/AABE firms have the opportunity to compete for City contracts without discrimination on the basis of race, color, religion, national origin, age, sex or handicap. To accomplish the objectives of the SBEDA policy, the City has established specific goals for local S/M/W/AABE participation in this contract.

2. **DEFINITIONS** related to the Small Business Economic Development Advocacy Provisions:

- a. **SBEDA Program:** Small Business Economic Development Advocacy Program designed to promote the utilization and participation of Local, Minority, Women, and African-American Owned Business Enterprises in City sponsored contract opportunities.
- b. **Small Business Enterprises (SBE):** a corporation, partnership, sole proprietorship or other legal entity, for the purpose of making a profit, which is independently owned and operated and which meets the U.S. Small Business Administration (SBA) size standard for small business. All firms meeting this threshold will be considered an SBE.
- c. **Local Business Enterprise (LBE):** a corporation, partnership, sole proprietorship, or other legal entity for the purpose of making a profit, which is headquartered within Bexar County for at least one year. For a branch office of a non-headquartered business to qualify as an LBE, the branch office must be located in Bexar County for at least one-year and employ a minimum of ten (10) residents of Bexar County or employ Bexar County residents for at least twenty-five (25%) of the entire company workforce for use at the local branch office.
- d. **Minority Business Enterprise (MBE):** a sole proprietorship, partnership, or corporation owned, operated, and controlled by a minority group member(s) who has at least 51% ownership. The minority group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an MBE, the enterprise shall be headquartered in Bexar County for any length of time, or shall be doing business in a locality or localities from which the City regularly solicits, or receives bids on or proposals for, City contracts within the MBES's category of contracting for at least one year.
- e. **Woman Business Enterprise (WBE):** a sole proprietorship, partnership, or corporation owned, operated and controlled by women who have at least 51%

ownership. The woman or women must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as a WBE, the enterprise shall be headquartered in Bexar County for any length of time or shall be doing business in a locality or localities from which the City regularly solicits or receives bids on or proposals for, City contracts within the WBE's category of contracting for at least one year.

- f. **African-American Business Enterprise (AABE)**: a sole proprietorship, partnership, or corporation owned, operated and controlled by an African-American group member(s) who has at least 51% ownership. The African American Group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an AABE, the enterprise shall be headquartered in Bexar County for any length of time or shall be doing business in a locality or localities from which the City regularly solicits, or receives bids on or proposals for, City contracts within the AABE's category of contracting for at least on year.

3. **Goals for Small Business Participation**

The goals for the utilization and participation of SBE-MBE-WBE-AABE businesses on this contract are as follows:

MBE	31%
WBE	10%
AABE	2.2%
SBE	50%

Please note that a small business could be classified in multiple categories and thus their utilization could in theory be counted in each category of goals. For example, **Prime Contractor X** submits a proposal, which specifies that they intend to subcontract with Subcontractor A for 10% of the contract. Subcontractor A is certified by the City as an SBE and MBE (a male-owned Hispanic Business owner can be certified as an SBE and MBE). **Prime Contractor X** also intends to subcontract with Subcontractor B for 13% of the contract. Subcontractor B is certified by the City as SBE, MBE and a WBE (a female-owned Hispanic Business owner can be certified as SBE, MBE and WBE). In addition, **Prime Contractor X** also intends to subcontract 10% of the contract to Subcontractor C—a City certified SBE and AABE (a male-owned African-American business owner can be certified as both a MBE and as a AABE Business). **Prime Contractor X** is also classified as a local SBE. **Prime Contractor X's** compliance with the SBEDA goals under this scenario would be as follows:

	City's SBEDA Goals	Prime Contractor X's Compliance
MBE	31%	33%
WBE	10%	13%
AABE	2.2%	10%
SBE	50%	100%

Under this scenario, the contractor would be in full compliance with the SBEDA policy.

Another example regarding compliance with the policy is as follows: **Prime Contractor Y** submits a proposal, which specifies that they intend to partner through a joint-venture agreement with Company D. Company D is certified by the City as both an SBE and MBE (a male-owned Hispanic Business—certified as an SBE and MBE). As part of their joint-venture agreement, Company A will perform on 32.5% of the contract. **Prime Contractor Y** also intends to subcontract 13% of the contract with Subcontractor F. Subcontractor F is a City certified SBE/MBE/WBE and AABE business. **Prime Contractor Y** is also classified as a local SBE.

Prime Contractor Y compliance with the SBEDA goals would be as follows:

	City's SBEDA Goals	Prime Contractor X's Compliance
MBE	31%	45.5%
WBE	10%	13%
AABE	2.2%	13%
SBE	50%	100%

Under this scenario, the contractor would be in full compliance with the SBEDA policy.

4. **Good Faith Effort Required**

Proposals shall include a Good Faith Effort Plan (GFEP—ATTACHED). The GFEP shall include specific documentation to utilize local, small, MBE-WBE-AABE businesses in a percentage, which equals or exceeds the above goals. **Any proposal that does not include**

the GFEP and does not receive approval of the GFEP by the Economic Development Department shall be declared non-responsive, and excluded from consideration.

5. **MBE-WBE-AABE Certification Required**

Only companies certified as MBE, WBE, or AABE through the South Central Texas Regional Certification Agency (SCTRCA), or as approved by the City of San Antonio Director of Economic Development, can be applied towards the contracting goals. Proof of certification must be submitted.

6. **SBEDA Information**

Interested contractors/respondents are encouraged to contact the Small Business Outreach Office for information regarding the City's SBEDA Policy. Please call (210) 207-3915 or FAX: (210) 207-8151.

GOOD FAITH EFFORT PLAN

NAME OF COMPANY: _____

PROJECT NAME: _____

1. Indicate all MBE-WBE-AABE-SBE subcontractors proposed for this contract. (Use additional sheets as needed.)

[illegible]

NOTE: If MBE-WBE-AABE-SBE contracting goals were met, skip to #9.

2. If MBE-WBE-AABE-SBE contracting goals were not achieved in a percentage that equals or exceeds the City's goals, please give explanation.

3. List all MBE-WBE-AABE-SBE Listings or Directories utilized to solicit participation.

4. List all contractor associations and other associations solicited for MBE-WBE-AABE-SBE referrals.

5. Discuss all efforts aimed at utilizing MBE-WBE-AABE-SBEs.

6. Indicate advertisement mediums used for soliciting bids from MBE-WBE-AABE-SBEs.

Good Faith Effort Plan

7. List all MBE-WBE-AABE-SBE bids received but rejected. (Use additional sheets as needed.)

COMPANY NAME	MBE-WBE-AABE-SBE CERTIFICATION NUMBER	HUE (Y/N)	REASON FOR REJECTION

8. Please attach a copy of your company's MBE-WBE-AABE-SBE policy.
9. Name and phone number of person appointed to coordinate and administer the Good Faith Efforts of your company on this project.

10. This Good Faith Effort Plan is subject to the Economic Development Department's approval.

SIGNATURE OF AUTHORIZED OFFICIAL

TITLE OF OFFICIAL

DATE

PHONE

FOR CITY USE

Plan Reviewed By: _____

Recommendation: Approval _____ Denial _____

Action Taken: Approved _____ Denied _____

DIRECTOR OF ECONOMIC DEVELOPMENT

Attachment 7

Federal DBE

**SAN ANTONIO INTERNATIONAL AIRPORT
CONCESSIONS DBE PROGRAM
49 CFR PARTS 23 AND 26**

OBJECTIVE/POLICY STATEMENT

The San Antonio International Airport has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U. S. Department of Transportation (DOT), 49 CFR Parts 23 and 26. The City of San Antonio has received federal financial assistance from the Department of Transportation and as a condition of receiving this assistance, the City of San Antonio has signed an assurance that it will comply with 49 CFR Parts 23 and 26.

It is the policy of the San Antonio International Airport that it will ensure that DBEs as defined in Parts 23 and 26, have an equal opportunity to receive and participate in DOT assisted contracts. It is our policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. To assist in the development of firms that can compete successfully in the market place outside the DBE Program.

DBE OBLIGATION

The San Antonio International Airport or its concessionaire agrees to ensure that DBEs as defined in 49 CFR Parts 23 and 26 have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard the San Antonio International Airport and its concessionaires shall not discriminate on the basis of race, color, national origin, gender, or disability in the award and performance of DOT-assisted contracts.

DBE GOAL

The DBE goal for this concession is 15%.

A firm submitting a proposal for this concession is asked to make good faith efforts to meet or exceed the goal for DBE participation. The DOT regulations require that overall concession goals be calculated consistent with the process in Section 26.45 for setting goals under DOT assisted projects (49 CFR Section 23.95 [a]). The San Antonio International Airport has applied the two-step process as outlined in 49 CFR Section 26.45. This two-step process consists of determining the relative availability

of DBEs ready, willing, and able to perform work for each “concession opportunity” that will occur during the goal period. A “concession opportunity” includes any of the following actions by the San Antonio International Airport.

1. Awarding a new concession agreement;
2. Exercising an option to renew an existing agreement; or
3. Making a material amendment to an existing agreement.

The San Antonio International Airport has utilized the following sources of data in determining our DBE goals.

1. DBE directories
2. List of proposers, or other firms who previously competed for a concession contract;
3. Information on DBEs and non-DBEs currently performing the same or a similar type of concession at San Antonio International Airport or other airports in the San Antonio International Airport’s market area.

In reviewing the relative availability of DBEs in our local market area, we determined that there were no local DBE firms in our area. As such, we decided to expand our market area to include the entire State of Texas. We searched for companies certified as DBEs under the Texas Unified Certification Program. We also contacted airports having concessionaires to inquire if any airport currently had DBEs as a car rental concessionaire. In our search we found that there were two DBE firms that perform car rental and leasing. Therefore, our goal to reflect our statewide findings for Passenger Car Rental and Leasing is calculated as follows:

$$\text{Base Figure} = \frac{\text{Number of DBEs in Local Market}}{\text{Number of All Firms}}$$

$$\text{Base Figure} = (2/13) = 15\%$$

The DBE goal for this concession agreement is 15%.

DEFINITIONS

Affiliation has the same meaning the term has in regulations of the Small Business Administration, 13 CFR part 121. Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly

- (a) One concern controls or has the power to control the other, or
- (b) A third party or parties controls or has the power to control both, or
- (c) An “identity of interest” between or among parties exists such that affiliation may be found.

In determining whether affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships.

Commercially useful function – A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials, and supplies used on the contract, for negotiating price, ordering the material, and installing (where applicable) and paying for the material itself.

Concession means a for profit business enterprise, located on an airport subject to Subpart F of 49 CFR part 23, that is engaged in the sale of consumer goods or services to the public under an agreement with the City of San Antonio (“sponsor or recipient”), another concessionaire, or the owner of a terminal, if other than the sponsor.

- (a) Appendix A to Subpart F of 49 CFR part 23 contains a listing of the types of businesses that are frequently operated as concessions.
- (b) Examples of entities that do not meet the definition of a concession include suppliers, flight kitchens and in-flight caterers servicing air carriers, government agencies, industrial plants, farm leases, individuals leasing hangar space, custodial and security contracts, individual taxis with permits, telephone and electric utilities, skycap services under contract with an air carrier, and management contracts.
- (c) Concessions may be operated under the following types of agreements:
 - (1) Leases.
 - (2) Subleases.
 - (3) Permits.
 - (4) Contracts.
 - (5) Other instruments or arrangements.

Concessionaire means one who operates a concession.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor means one who participates, through a contract or subcontract (at any tier) in a DOT assisted highway, transit, or airport program.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged Business Enterprise or DBE means a for profit small business concern*--

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

* Subpart F, of 49 CFR Part 23, defines a small business concern for DBE concessionaires;
Subpart A, Section 26.5, of 49 CFR Part 26, defines a small business concern for a DBE that is not a concessionaire.

Good faith efforts mean efforts to achieve a DBE goal or other requirements of Parts 23 and 26, which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirements.

Joint Venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Personal Net Worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm, or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse. (Note: Disadvantaged owners of airport concessionaires are not required to submit PNW statements at this time).

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantage:
 - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (iv) "Asian-Pacific Americans," which includes persons who origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the

- Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia or Hong Kong;
- (v) "Subcontinent Asian American," which includes persons who origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Sponsor means the recipient of an FAA grant.

COUNTING JOINT VENTURES

Joint Ventures do not have to be fifty-one percent (51%) DBE owned in order to be counted toward the participation goal. *Joint ventures that do not include any DBE firms will not count toward the goal.* A joint venture with ownership of DBE partners in any percentage will be counted for that percentage equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces, *(provided the DBE ownership is real and substantial and the DBEs are performing a commercially useful function).*

The required documentation to be submitted to the City, along with the proposal, for Joint Ventures with DBE partners shall include:

- a. The Joint Venture Agreement for the specific contract including a detailed statement of ownership.
- b. Corporate resolutions or other documents authorizing the firms to enter into the Joint Venture.
- c. A description of the work to be performed by all the Joint Venture Partners.
- d. Proof of current certification status of the individual DBE venture partners (Certification must be from a firm that has been certified by one of the six certifying agencies of the Texas Unified Certification Program (TUCP). The six agencies are: Texas Department of Transportation (TxDot), North Central Texas Regional Certification Agency (NCTRCA), South Central Texas Regional Certification Agency (SCTRCA), City of Houston, City of Austin, and Corpus Christi Regional Transportation Authority. Each certifying entity will maintain and process all DBE applications in their designated area throughout the state.

A certification must take place before the proposal due date. The certification action must be completed by this date in order for the firm's proposed work on the particular contract to be credited toward the DBE goal. It is not enough for the application to have been submitted by the deadline. Proof of DBE certification by the SCTRCA or the other five certifying entities of the TUCP must be submitted at the time of the proposal due date.)

GOOD FAITH EFFORTS

A proposer is to submit a DBE Good Faith Effort Plan (Form 1) indicating how the good faith efforts were made to achieve the goal. The proposer must submit a good faith effort plan and submitted documented "good faith efforts" regardless of meeting DBE goal.

All proposers shall submit the following:

1. A Federal DBE Good Faith Effort Plan Documenting the Good Faith Efforts (DBE Form 1),
2. The Demonstration of Good Faith Efforts (DBE Form 2),
3. List of VENDORS to be Utilized (DBE Concession Form 3),

If the above referenced documents are not completed and signed (Forms 1 through 3) by the proposer, the proposal will be considered non-responsive.

The proposer shall demonstrate to the satisfaction of the DBE Liaison, that sufficient efforts have been made to achieve the goal. The requirements for demonstrating "good faith efforts" are set forth as follows:

1. Written notices to DBEs contacted by the proposer for specific scopes of work identified by the proposer for subcontracting opportunities or for purchases of goods and services from certified DBEs prior to proposal due date.
2. Attendance at a pre-proposal conference, if any, scheduled by the City to inform DBEs of concession opportunities under a given solicitation.
3. Efforts made to define additional elements of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the goal.
4. For those DBES responding affirmatively in writing to the notice required by Item (1) above,
 - (a) reasons why agreements were not reached, including written explanation for rejection of bids;
 - (b) if additional elements of work have been identified by the proposer as available for subcontracting, the proposer shall contact the Department of Economic Development or the Aviation's DBE Liaison to ascertain the availability of DBE firms in those areas.
5. Seeking the assistance of the Aviation's DBE Liaison or the Department of Economic Development in contacting DBEs.
6. In addition, all proposers will be required to submit the following information with the proposal:
 - (a) The names and addresses of DBE firms that will participate in the contract;
 - (b) A description of the work that each DBE will perform
 - (c) The dollar amount of the participation of each DBE firm participating

EVALUATION OF GOOD FAITH EFFORTS

The good faith effort of a proposer will be evaluated by the DBE Liaison to determine whether “sufficient” good faith efforts to obtain DBE participation were made.

The following is a list of types of actions, which the DBE Liaison may consider as part of the proposer’s good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

Criteria used to evaluate “Good Faith Efforts” are as follows:

1. Soliciting through all reasonable and available means (e.g. attendance at pre-proposal conferences, advertising and/or written notices) the interest of certified DBEs who have the capability to perform the work of the contract. The proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the proposer might otherwise prefer to perform these work items with its own forces.
- 3.(a) Negotiating in good faith with interested DBEs. It is the proposer’s responsibility to make a portion of the work available to DBE subcontractors and/or suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and/or suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting or purchases; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- (b) A proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goal into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a concessionaire to perform the work of a concession with its own organization does not relieve the proposer of the responsibility to make good faith efforts. Concessionaire is not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

4. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The concessionaire's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the concessionaire's efforts to meet the project goal.
5. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
6. In determining whether a proposer has made good faith efforts, the DBE Liaison may take into account the performance of other proposers in meeting the concession goal. For example, when the apparent successful proposer fails to meet the concession goal, but others meet it, the DBE Liaison may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful proposer could have met the goal. If the apparent successful proposer fails to meet the goal, but meets or exceeds the average DBE participation obtained by other proposers, the City may view this, in conjunction with other factors, as evidence of the apparent successful proposer having made good faith efforts.

RECONSIDERATION MECHANISM

The Aviation Department's DBE Liaison will evaluate the "good faith efforts" of a firm. If after reviewing the good faith efforts submitted by Proposer, the DBE Liaison determines that the Proposer has failed to adequately document its good faith efforts, then the Proposer shall have the opportunity to provide written documentation or argument, to the Aviation Director, concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Proposer will have the opportunity to meet in person with the Aviation Director to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Aviation Director will provide a written decision on reconsideration explaining the basis of his decision. In cases of dispute, the final decision in determining whether Good Faith Efforts have been made rests with the Aviation Director.

The Aviation Director may determine that the efforts of the Proposer substantially comply with the purpose of this program and such determination is in the best interest of the DBE Program and the City. However, if the Aviation Director determines that the Proposer did not make good faith efforts to meet the goal, the decision is not administratively appealable to the Department of Transportation.

**SAN ANTONIO INTERNATIONAL AIRPORT
CONCESSION DBE PROGRAM
DBE GOOD FAITH EFFORT PLAN
FOR DOCUMENTING GOOD FAITH EFFORTS**

NAME OF PROPOSER:

1. Please list all the firms that were notified of opportunities to subcontract and/or for the purchase of goods and services. Please include copies of written notices to DBEs contacted by the proposer. Such notices shall include information on the plans, specifications and scope of work, including but not limited to supply opportunities and the deadline for submission of interest in teaming.

NAME OF COMPANY	DATE WRITTEN NOTICE WAS SENT AND METHOD (LETTER, Fax)	SCOPE OF WORK TO BE PERFORMED BY FIRM	DID DBE SUBMIT WRITTEN RESPONSE ? (Yes/No)	IF DBE RESPONDED, REASON AGREEMENT WAS NOT REACHED.
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

2. Did you attend the pre-proposal conference scheduled by the City for this concession? __ Y
__ N

3. List all DBE listings or directories, contractor associations, and/or any other associations utilized to solicit DBE subcontractors/suppliers:

4. Discuss efforts made to define additional elements of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the goals:

5. Indicate advertisement mediums used for soliciting bids from DBEs. (Please attach a copy of the advertisement(s):

6. Provide any other information which explains the process your company undertook to meet the goals for this concession

7. Name and phone number of person appointed to coordinate and administer the Federal DBE Good Faith Efforts of your company on this project.

Name: -----
Title: -----
Phone Number: -----

AFFIRMATION

I HEREBY AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

NAME AND TITLE OF AUTHORIZED OFFICIAL: _____

SIGNATURE: _____ DATE: _____

The Federal DBE Good Faith Efforts Plan is subject to the review by the Aviation Department's DBE Liaison and final approval in determining whether Good Faith Efforts have been made rests with the Aviation Director.

FOR SAN ANTONIO INTERNATIONAL AIRPORT USE ONLY:

Plan Reviewed by _____ Date: _____
Signature of DBE Liaison

Recommendation: Approval: _____ Denial: _____

**SAN ANTONIO INTERNATIONAL AIRPORT
CONCESSION DBE PROGRAM
DEMONSTRATION OF GOOD FAITH EFFORTS**

The undersigned proposer has satisfied the requirements of the Request for Proposal in the following manner (please check the appropriate space[s]):

_____ The proposer is committed to a minimum of _____% DBE utilization on this concession.

_____ The proposer is unable to meet the DBE goal of _____% and is committed to a minimum of _____% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

_____ The proposer is a certified DBE. (Proof of certification must be submitted at the time of the proposal due date.) *(Even though the proposer is a certified DBE, the proposer is not relieved of the responsibility to make good faith efforts.)*

Type of Concession: _____

Name of Proposer's Firm: _____

By: _____
Signature of Authorized Representative

Title

Date

**SAN ANTONIO INTERNATIONAL AIRPORT
FEDERAL DBE PROGRAM
LIST OF VENDORS TO BE UTILIZED**

Type of Concession:

Name of Proposer's Firm:

The above named proposer as part of the procedures for the above referenced concession, submits the following **list of all vendors** to be utilized in the performance of work to be done on said referenced concession.

NAME OF COMPANY	IS FIRM A SUBCONTRACTOR, SUPPLIER OR SERVICE PROVIDER	DESCRIPTION OF WORK/SUPPLIES/SERVICE S TO BE PERFORMED/PROVIDED BY FIRM	IS FIRM DBE CERTIFIED YES or NO?	ESTIMATED \$ OF WORK/SUPPLIES OR SERVICES TO BE PERFORMED/ PROVIDED BY FIRM
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

(Please attach additional sheets if necessary)

All DBE vendors must submit proof of certification by one of the six certifying agencies of the TUCP through the Proposer. It is understood and agreed that, if awarded a contract by the City of San Antonio, the Concessionaire will not make deletions, or substitutions to this certified list without consent of the Director of Aviation (through the submittal of DBE Form 5, CHANGE OF VENDORS). In order to determine if a proposer utilizing the vendors listed above, the Aviation Department will verify each concessionaire's DBE participation on a quarterly basis throughout the term of the Agreement through the submittal of a Quarterly Purchase Activity Report (DBE Form 5) for the purchases of goods and services made during each quarter throughout the term of the Agreement.

AFFIRMATION

DBE Form 3 – CONCESSION

LIST OF VENDORS TO BE UTILIZED

I HEREBY AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

NAME AND TITLE OF AUTHORIZED OFFICIAL:_____

SIGNATURE:_____DATE:_____

**SAN ANTONIO INTERNATIONAL AIRPORT
CONCESSIONS DBE PROGRAM
CHANGE OF VENDORS**

TYPE OF CONCESSION: _____

Name of Concessionaire: _____

The above named Concessionaire requests approval of the following addition(s) and/or deletion(s) from the List of Vendors to be Utilized (DBE Form 3), as originally submitted as part of the proposal on the above named concession:

Delete	Name of Firm	Is firm a Subcontractor, Supplier or Service Provider	Description of Work, Supplies, Services to be Performed/ Provided by Firm	Is firm DBE Certified Yes or No?	Estimated \$ of Work, Supplies, or Services to be Performed by Firm

REASON FOR REMOVING EACH OF THE ABOVE SUBCONTRACTORS/SUPPLIERS/VENDORS: _____

Please indicate the names of the firms you wish to add, replace or substitute.

Add	Name of Firm	Is firm a Subcontractor, Supplier or Service Provider	Description of Work, Supplies, Services to be Performed/ Provided by Firm	Is firm DBE Certified Yes or No?	Estimated \$ of Work, Supplies, or Services to be Performed by Firm

1. If a DBE Subcontractor/Supplier/Vendor was deleted/terminated, was it replaced by another DBE Subcontractor/Supplier? Yes _____ No _____

AFFIRMATION

THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF, I FURTHER UNDERSTAND AND AGREE THAT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

Name & Title of Authorized Official: _____

Signature: _____

Approved: _____

DIRECTOR OF AVIATION

SAN ANTONIO INTERNATIONAL AIRPORT

Quarterly Purchase Activity Report

It is important to check all certification expiration dates for vendors to assure you are using a currently certified vendor. In order to verify current certification, check with vendor, or Airport DBE Liaison (210) 207-3505. Please submit this form **no later than 30 days** after the end of each quarter in which the purchase was made. Please attach copies the DBE certificate, issued by one of the six certifying entities of the TUCP, for each certified firm being utilized.

Tenant: _____ Address: _____

Reporting Period: _____

Vendor Name and Address	Type of Purchase	Date of Purchase	Purchase Amount	Certified As: DBE	Ethnicity	Certification Expiration Date

Confirmed by: _____

Title: _____ Date: _____

Sworn and subscribed to before me, a Notary Public in and for the County of Bexar, San Antonio, Texas on this _____ day of _____ 20____.

Notary Public

My commission expires _____

ATTACHMENT 8

INSURANCE REQUIREMENTS

Prior to the commencement of any work under an Agreement awarded pursuant to this RFP, the selected Respondent shall furnish an original completed Certificate(s) of Insurance to the *Aviation Department, 9800 Airport Boulevard, San Antonio, TX 78216, Attn: Ms. Lucille T. Pina*, which shall be clearly labeled *Car Rental Concession at San Antonio International Airport* in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original Certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under said Agreement until such Certificate shall have been delivered to the Aviation Department, Attn: Ms. Lucille T. Pina, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

The City reserves the right to review these insurance requirements during the effective period of the Agreement and any extension or renewal thereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding the Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

Respondent's financial integrity is of interest to the City, and, therefore, subject to Respondent's right to maintain reasonable deductibles in such amounts as are approved by the City, Respondent shall obtain and maintain in full force and effect, for the duration of the Agreement, and any extension thereof, at Respondent's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City.

	TYPE	AMOUNT
1.	Workers' Compensation and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2.	Commercial General (Public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Broad Form Contractual Liability d. Products/completed operations e.* Broad form property damage,	For Bodily Injury and Property Damage of \$1,000,000 per occurrence \$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage

	to include fire legal liability f. Personal Injury g.* Explosion, collapse, underground	
3.	Comprehensive Automobile Liability* a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.

*If Applicable

The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies. Respondent shall be required to comply with any such requests and shall submit a copy of the replacement Certificate of Insurance to City at an address provided by City within ten (10) days of the requested change. Respondent shall pay any costs incurred resulting from said changes.

Respondent agrees that, with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name the City and its officers, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the City.

When there is a cancellation, non-renewal or material change in coverage, which is not made pursuant to a request by City, Respondent shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Respondent knows of said change in advance, or ten (10) days notice after the change, if the Respondent did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following addresses:

City of San Antonio
Risk Management
*Car Rental Concession at
San Antonio International Airport*
P. O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
Department of Aviation
*Car Rental Concession at
San Antonio International Airport*
9800 Airport Boulevard
San Antonio, Texas 78216

If Respondent fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have and is not the exclusive remedy for failure of Respondent to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon Respondent's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Respondent to stop work under the Agreement, and/or withhold any payment(s) which become due to Respondent thereunder until Respondent demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which Respondent may be held responsible for payments of damages to persons or property resulting from Respondent's or its subcontractors' performance of the work covered under the Agreement. It is agreed that Respondent's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising out of operations under this contract.

ATTACHMENT 9 INDEMNIFICATION REQUIREMENTS

RESPONDENT, if selected, covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to RESPONDENT's, if selected, activities under this CONTRACT, including any acts or omissions of RESPONDENT, if selected, , any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. RESPONDENT, if selected, shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or RESPONDENT, if selected, known to RESPONDENT, if selected, related to or arising out of RESPONDENT's, if selected, activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at RESPONDENT's, if selected, cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by RESPONDENT, if selected, to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. RESPONDENT, if selected, further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with

any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

RESPONDENT, if selected, shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or RESPONDENT, if selected, known to CONSULTANT related to or arising out of contractor's activities under this contract.

Attachment 10

Contract Documents

**CAR RENTAL LEASE AND CONCESSION AGREEMENT
AT SAN ANTONIO INTERNATIONAL AIRPORT**

This Agreement entered into this _____ day of _____, 2003, by and between the City of San Antonio, a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance Number 97814 passed and approved by the City Council on June 19, 2003, hereinafter called "City" and _____, a Corporation chartered under the laws of _____, acting by and through its authorized officers pursuant to a resolution of its Board of Directors, hereinafter called "Concessionaire".

WITNESSETH:

WHEREAS, the City of San Antonio is the owner and operator of the San Antonio International Airport, hereinafter referred to as "the Airport" and;

WHEREAS, the Concessionaire is a corporation engaged in the business of renting motor vehicles to others, and;

WHEREAS, the proposal of _____, to operate a car rental concession at San Antonio International Airport, was submitted to the City on May 21, 2003; and

WHEREAS, the City wishes to grant to Concessionaire the right to operate a concession for certain car rental facilities at the Airport under a non-exclusive agreement containing mutually satisfactory terms and covenants.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, privileges, obligations and agreements herein contained, the City and the Concessionaire hereby mutually undertake, promise and agree, each for itself, and its successors and assigns as follows:

Article I

DEFINITIONS

1.1 "Agreement" as used herein contemplates and includes the lease of city-owned property (referred henceforth as Assigned Areas) and permission for Concessionaire to use such city-owned property for the conduct of a car rental concession within said city-owned property under the terms and conditions expressly set forth herein.

1.2 "Airport Terminals" and "Terminals" shall mean the Terminal Buildings at San Antonio International Airport known as Terminal 1 and Terminal 2.

1.3 "Assigned Area" is the area or areas of the Airport Terminal(s) designated by this Agreement and the Exhibits thereto as the place or places where the business of Concessionaire may be conducted.

1.4 “City of San Antonio” and “City” shall include such public officials and public bodies as may, by operation of law, succeed to any or all the rights, powers or duties which lawfully reside in the City Council of San Antonio.

1.5 “Aviation Director” and “Director” shall mean the Director or Acting Director of San Antonio International Airport as from time to time appointed by the City Manager and shall include such person or persons as may from time to time be authorized in writing by the City Manager or by the Director to act for him with respect to any or all matters pertaining to this Agreement.

1.6 “Gross Revenue” with respect to sales at all locations at or on San Antonio International Airport and/or Stinson Municipal Airport shall mean all monies or other consideration paid or payable to the Concessionaire derived from, arising out of, or payable on account of the business conducted by the Concessionaire or from the operations of Concessionaire under this Agreement, whether for cash or credit and without any deduction for credit card discounts, and whether the same shall be paid or unpaid.

Included in, but not limited to “Gross Revenue” are any and all monies or other consideration paid or payable to the Concessionaire for:

- (a) Sale or lease of ancillary items (baby car seats, bikes, etc.);
- (b) Net fees, commissions and charges derived from the rental or sale of cellular or mobile phones or other services;
- (c) Net fees after discounts, paid for the rental or leasing of vehicles pursuant to daily or time charges and/or mileage;
- (d) Customer supplies;
- (e) One-way or drop-off charges, for or with respect to Motor Vehicle rentals and leases accrued to or billed by Concessionaire for or in conjunction with the rental or lease of said Motor Vehicles to the public, whether on a cash, credit, charge or other basis;
- (f) Any fees(s) charge(s) designed to collect from customers the rentals that Concessionaire must pay to City for the privilege of operating at the Airport. Should such a fee be instituted by Concessionaire, it shall not exceed 11.11% of the total of the services sold to the customer. Additionally, this fee or charge shall not be labeled a tax or given any other name implying that the fee is a charge or pass through similar to a tax that is mandated by a governmental entity;
- (g) Fifty percent (50%) of the amount charged to rental car customers for Loss Damage Waiver.
- (h) All payments received in connection with operations authorized under the Agreement, regardless of the manner in which stated and collected, must be included in Gross Revenue.

Excluded from “Gross Revenue” are:

- (1) The amounts of any federal, state, or municipal sales taxes or other similar taxes separately stated and collected from customers, whether currently or hereinafter levied or imposed;
- (2) Amount of gratuities paid or given by patrons of Concessionaire to employees of the Concessionaire;
- (3) Receipts from the sale of Motor Vehicles, gasoline or other fuels;
- (4) Receipts from the sales at cost of uniform or clothing to the Concessionaire's employees where such uniforms are required to be worn by such employees;
- (6) Receipts from acceptance of personal accident insurance; and
- (7) Sums received as proceeds for damage repairs to Motor Vehicles owned or controlled by Concessionaire or to property of Concessionaire, or for loss, conversion or abandonment of such Motor Vehicles.
- (8) Sales to customers who are not patrons of San Antonio International Airport or Stinson Municipal Airport and who reside in Bexar County or adjoining counties.

1.7 "Minimum Annual Guarantee" is the minimum amount of money due City annually from Concessionaire in consideration of the rights granted Concessionaire. Payment should be made on a monthly basis according to the terms of this Agreement.

1.8 "Motor Vehicle" shall mean automobiles, vans, minibuses, and trucks only, as determined by the state of Texas for the purposes of registration of vehicles. For the purpose of this Agreement, "car" and "Motor Vehicle" are used interchangeably.

1.9 "Percentage Payment" is the sum of money due City on account of City's share of Gross Revenue from all sales and revenues as hereinafter provided.

Article II

TERM

2.1 The term of this Agreement shall commence on October 1, 2003 and will expire on June 30, 2008, provided, however, that the City shall have the right to terminate this Agreement upon written notice at least 180 days before the effective date of termination. The City shall use its best efforts to deliver the Assigned Areas on the commencement date, however, if delivery of the Assigned Areas shall be delayed beyond such commencement date, City shall not be liable to Concessionaire for any damage resulting from such delay.

Article III

PRIVILEGES AND OBLIGATIONS OF THE CONCESSIONAIRE

3.1 The Concessionaire has the right, privilege and obligation to operate a first class vehicle rental service within its Assigned Areas of the Airport Terminals as depicted in Exhibits 1 & 2 as

such Assigned Areas exist as of the commencement of this Agreement. Concessionaire agrees and fully understands that the right herein granted is not an exclusive right and that the City may and shall grant other similar rights to any other individuals, companies, corporations or entities engaging in like activity at the Airport provided, however, that any other or future non-exclusive vehicle rental concessionaire shall not be granted terms or conditions more favorable than those granted to Concessionaire.

3.2 The privilege granted herein is for the operation of a vehicle rental concession and for no other purpose and does not extend to or encompass any other activity or area including, but not limited to, vending machines, pay telephones, passenger parking or employee parking. Notwithstanding the foregoing, and upon receipt by the Concessionaire of the prior written approval of the Director, ancillary sales and services may be offered by Concessionaire and all monies or other consideration received by Concessionaire therefrom shall be included in the Gross Revenue of Concessionaire hereunder. Sales and services are considered to be ancillary when they form a part of the car rental services and not when they constitute an independent transaction.

3.3 The Concessionaire has the right to install and maintain upon the rear wall of its Assigned Areas a company logo or sign provided that the design, installation and maintenance of such sign shall be consistent with the graphic standards of the Airport and shall have the written approval of the Director prior to installation as to the conformance of such graphic standards. Concessionaires occupying the two corner car rental locations in Terminal 1 may, at their cost and with the written approval of the Director, place additional directional signage if a mutually agreeable location for such signage can be determined and may also place signage displaying only their company name on the back wall abutting Lease Area F. Additionally, Concessionaire may place computer terminals for customer usage on its ticket counter and signage on the sidewalls or on or behind its ticket counter advertising the rates and/or services of Concessionaire. However, handwritten signs of any kind shall not be allowed nor shall banners or signs hang or extend beyond either the top of the ticket counter or the sidewalls. The area in front of the ticket counter shall be used for queuing and for no other purpose.

3.4 The Concessionaire has the rights of ingress and egress from its Assigned Area over the Airport roadways, including common use roadways, subject to any rules or regulations which may have been established or shall be established in the future by the Airport, the City of San Antonio or the State of Texas. Such rights of ingress and egress shall apply to the Concessionaire's employees, guests, patrons, invitees, suppliers and other authorized individuals. The rights of ingress and egress likewise apply to the transport of equipment, material, machinery and other property.

3.5 In respect to its operations at San Antonio International Airport, Concessionaire shall conform to the City's Small Business Development Advocacy (SBEDA) Program, the provisions of which have been extended in principle and practice to Concessionaires at San Antonio International Airport. This will require compliance with all applicable provisions of the (SBEDA) Clause contained in Exhibit 3, as well as submittal of a detailed written plan for utilizing minority business enterprises in the procurement of goods and services necessary for operating the concession. In furtherance of the City's policy of assuring a maximum opportunity to involve qualified small business and local business enterprises to the greatest extent feasible, the City has established the following goals:

Minority-Owned Business Enterprise (MBE): 31.0%
Women-Owned Business Enterprise (WBE): 10.0%
African-American-Owned Business Enterprise (AABE): 2.2%
Small Business Enterprise (SBE): 50.0%

Accordingly, Concessionaire shall make good faith efforts to purchase from MBEs, WBEs, AABEs, and SBEs, the specified percentage of goods and services as such percentage currently exists or may be amended in the future. Concessionaire agrees to furnish to City, on a quarterly basis, such documentation as City shall require to verify such purchase and such good faith efforts. Failure to furnish such documentation within 30 days following receipt by Concessionaire of written demand from City for such documentation and/or willful or unjustified failure, as determined by City, on the part of the Concessionaire to make such good faith efforts shall, at the option of the City, cause this Agreement to terminate as of the date specified in a written termination notice to Concessionaire provided by City acting through the Director.

3.6 Notwithstanding the above, and in addition to the above, Concessionaire shall use its best efforts to ensure that the vendors from which it purchases its goods and services in accordance with its Good Faith Effort Plan shall also be considered to satisfy to Disadvantage Business Enterprise (DBE) criteria set forth in 49 CFR Parts 23 and 26 as they now exists or as they may be amended or replaced in the future. City agrees that it shall notify Concessionaire in the event that regulations are issued by the U.S. Department of Transportation (DOT) implementing Section 511(h) of the Airport and Airway Improvement Act (AAIA) of 1982, as amended. Following such notification, Concessionaire shall be required to take all necessary and reasonable steps to achieve a DBE goal which shall be the greater of ten percent (10%) or such other DBE goal applicable to car rental Concessionaires as shall be established by the Department of Transportation during the term of the Agreement or any extension thereof and to comply with other appropriate provisions of 49 CFR Parts 23 and 26 implementing Section 511(h) of the AAIA. The goal shall be measured as percentage of the total estimated Gross Revenue earned by Concessionaire hereunder. DBE participation may be in the form of any legal arrangement meeting the eligibility standards in 49 CFR Parts 23 and 26. Concessionaire shall submit such reports as may be required by City in the form specified by City for the purpose of demonstrating compliance with the provisions set forth in this paragraph.

3.7 Further, in compliance with requirements of the Department of Transportation, the following are specifically made a part of this Agreement:

- a. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23, subpart F. The Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with award or performance of any concession agreement covered by 49 CFR part 23, subpart F.
- b. The Concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements.

3.8 The Airport, while providing parking facilities to the Concessionaire's employees in common with employees of other Concessionaires and users of the Airport, retains the right to institute a reasonable charge for the privilege of utilizing these parking facilities.

3.9 The Concessionaire shall use the counter and office area of its Assigned Areas only for the purpose of advertising, billing and otherwise contracting the rental of non-chauffered Motor Vehicles and assisting in the return of Motor Vehicles owned or controlled by Concessionaire. However, Concessionaire's employees and/or staff members shall not solicit customers/passengers or discuss car rental particulars while said employee or staff member is beyond or outside of his or her position behind Concessionaire's counter.

3.10 Concessionaire shall be limited to parking only one passenger pickup vehicle in each passenger pickup area. The passenger pickup location and the number of Concessionaire's passenger pickup vehicles that may be parked in a passenger pickup area may be adjusted as determined in the sole discretion of the Director. Additionally, the number, size, and frequency of passenger pickup vehicles operating on Airport premises may be restricted at the sole discretion of the Director.

Article IV.

IMPROVEMENTS BY CITY

4.1 Assigned Areas existing as of the date of the execution of this Agreement will be delivered to Concessionaire in an "AS IS" condition and the parties hereto expressly agree that City has made no representations and has no duty to perform any improvements to, within or concerning the Assigned Areas. Any city-owned improvements, fixture or other items in or on the Assigned Areas at the commencement of the term of this Agreement which Concessionaire does not desire to use in its operations hereunder shall be removed by Concessionaire at its sole expense. Concessionaire shall expeditiously provide City with a written accounting of the disposition of such improvements, fixtures or other items. Funds, if any, received by Concessionaire for such improvements, fixtures or other items in excess of the cost of removal and disposition of same shall be promptly paid by Concessionaire to City.

4.2 Walls, flooring, ceiling lighting and counter shells (front and top minus inserts) will be provided by the City to those Concessionaires which occupy new or reconfigured car rental concession areas. The parties expressly agree that City has made no other representations and has no duty to perform any other improvements to, within or concerning the Assigned Areas.

4.3 City and Concessionaire acknowledge that improvements to the Terminals may be undertaken during the term of this Agreement. City will attempt to perform such improvements in a manner so as not to unreasonably interfere with the operations of Concessionaire authorized hereunder. Concessionaire hereby expressly waives any and all claims for damages occasioned by the loss of profits, if any, as a result of the interruption of business of Concessionaire that may arise as a result of such improvements undertaken by City.

4.4 Throughout the term of this Agreement, City shall provide electrical current at such locations as determined by City and in reasonable amounts for the operation of the business of Concessionaire authorized hereunder. In consideration of such provision, Concessionaire hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency or impairment of any such utility or the delivery or removal system therefor, or Act of God, tornado, civil commotion, riot, explosion, collapse of building, fire or collision.

Article V.

IMPROVEMENTS BY CONCESSIONAIRE

5.1 Concessionaire shall, without cost to City, provide the Assigned Areas with all improvements not provided by City for the customary operation of services in a first class car rental facility.

5.2 Should Concessionaire perform improvements to its Assigned Areas, such improvements shall be at the sole cost and sole risk of Concessionaire. Five sets of plans and specifications must be submitted to the Director for his review prior to the commencement of such improvements. Work shall not commence until written approval from the Director is received and the plans are stamped "approved". The Director shall, within fifteen (15) days of receipt of any such plans either approve or disapprove the plans and/or specifications submitted by the Concessionaire. The approval by the Director of any plans and specifications refers only to the conformity of such plans and specifications to the general architectural and aesthetic plan for the concession areas and such approval shall not be unreasonably withheld.

5.3 No changes or alterations shall be made to said plans and specifications after initial approval by the Director. No structural alterations or improvements shall be made to or upon the Assigned Area at any time throughout the terms of this Agreement without prior written approval of the Director. Upon approval of the plans and specifications, Concessionaire shall proceed in a reasonably diligent manner to perform such approved improvements. Concessionaire shall at all times be responsible for damage to the person or property of a third party or the City resulting from the acts or omission of Concessionaire, its agents, servants, employees or independent contractors engaged by Concessionaire.

5.4 All improvements made to the Assigned Area and additions and alterations thereto made to the Assigned Area by the Concessionaire, shall be and remain the property of the Concessionaire until the expiration of the term of this Agreement, as set forth in Article II, or upon termination of this Agreement (whether by expiration of the term, cancellation, forfeiture, or otherwise, whichever first occurs), at which time the said improvements shall become the property of the City, provided, however, that any trade fixtures, signs and other personal property of the Concessionaire not permanently affixed to the Assigned Areas shall remain the property of Concessionaire and shall so remain unless Concessionaire shall fail within fourteen (14) days following the termination of this Agreement to remove its trade fixtures, signs and other personal property of Concessionaire not permanently affixed to the Assigned Areas in which event, at the option of the City, title to same shall vest in City at no cost to City or City may elect to exercise its rights set forth in Paragraph 14.6 of this Agreement.

5.5 The Concessionaire shall not remove or demolish, in whole or in part, any improvements upon the Assigned Area without the prior written consent of the Director, which may be conditioned upon the obligation of Concessionaire to replace the same by an improvement specified in such consent.

Article VI.

PRIVILEGE FEES, CHARGES, AND ACCOUNTABILITY

6.1 The Concessionaire agrees to pay to the City, for Concessionaire's use and access to the Airport, the greater of the Minimum Annual Guarantee or the Percentage Payment. Other than as provided below, the Minimum Annual Guarantee shall be not less than the amount set forth in this paragraph 6.1 nor subject to reduction or renegotiation.

Concessionaire agrees to pay a Minimum Annual Guarantee to the City in the amount of \$_____.

6.2 The Concessionaire agrees to pay to City a Percentage Payment of ten percent (10%) of Gross Revenue as defined and stated in Paragraphs 1.6, 1.9 and 6.6 of this Agreement.

6.3 In addition to the above-described Percentage Payment of Gross Revenue, as set forth in Section 6.2, for Concessionaire's use and access to the Airport, Concessionaire shall also pay an additional sum for rental for the terminal counter space. The counter rental shall be at the prevailing terminal rental rate and shall be the square foot area occupied by Concessionaire, as depicted in Exhibits 1 and 2 attached hereto, multiplied by the average rental charge in effect for each terminal building at the beginning of each contract year. Such prevailing terminal rate shall be adjusted yearly on October 1. One-twelfth of the counter rental shall be paid to the City in advance, on the first day of each and every month during the term hereof, without requirement of a notice to the Concessionaire. The amount shall be pro-rated for time periods less than one month, based upon a fraction of which the numerator should be the number of days left in the month and the denominator should be the number of days in the month.

6.4 As long as Concessionaire is not in default in any of the terms and conditions contained in this Agreement, the Minimum Annual Guarantee set forth above shall be abated on a monthly basis if during the term hereof through no fault of Concessionaire either or both of the following conditions should occur:

- a. The number of monthly passengers deplaning on scheduled airline flights at the Airport shall be less than seventy-five percent (75%) of the number of deplaning passengers as compared with the same month during the first year of the term of this Agreement.
- b. The business of Concessionaire authorized hereunder shall be affected by shortages or other disruptions in the supply of automobiles, gasoline or other goods necessary for operation of Concessionaire's business which result in twenty-five percent (25%) or greater reduction in monthly Gross Revenue of Concessionaire hereunder as compared with the same month during the first year of the term of this Agreement.

During any period of abatement, Concessionaire will pay to the City ten percent (10%) of Gross Revenue in lieu of the Minimum Annual Guarantee as well as all other applicable sums set forth in this Agreement. Said abatement shall be in effect for each month that either or both of the aforesaid conditions shall continue to exist.

6.5 One-twelfth of the Minimum Annual Guarantee will be paid to the City in advance, on the first day of each and every month during the term hereof, without the requirement of a notice to the Concessionaire. The amount shall be pro-rated for time periods less than one month, based upon a fraction for which the numerator shall be the number of days in the month that concessionaire occupies the Assigned Area and the denominator should be the days in the month.

6.6 Concessionaire shall furnish to the City by the twentieth (20th) day of each month a statement showing total Gross Revenue, as defined herein, for the preceding month. With each monthly statement the Concessionaire shall remit to the City the above-stated percentage of its aggregate Gross Revenue derived through the end of the preceding calendar month during such contract year, only to the extent that such percentage of said aggregate exceeds the payments made through the end of the preceding calendar month to the City. For the purposes of this Agreement, a contract year shall be a period of twelve consecutive months beginning on the commencement date of this Agreement and ending on June 30, 2004, and thereafter ending on June 30 of every subsequent calendar.

6.7 On the twentieth (20th) day of the month following the end of the end of the contract year for each contract year of the term hereof, the Concessionaire shall pay to the City at the office of the Director the balance of the fees and charges, if any, due to the City for the preceding period on account of the percentage payment provisions hereof, it being understood that the fees and charges, though payable monthly, shall be computed on an annual basis, except where expressly stated otherwise. If any credit or refund is due to the Concessionaire, such credit or refund shall be given only after the City has received the annual written audit by an independent Certified Public Accountant which is required under paragraph 6.10 of this Agreement. Such refund or credit, if any, shall be given within 30 days of the date in which such audit is received.

6.8 Fees and charges paid to the City shall not include any taxes, fees or license charges that may be levied, assessed or charges by any governmental entity. The Concessionaire agrees to pay such taxes, fees or license charges directly to the appropriate taxing authority.

6.9 Concessionaire shall keep full and accurate books and records including, if requested by City, records showing the Gross Revenue of Concessionaire according to such Motor Vehicle categories as shall be determined by City and duplicate rental agreement invoices, serially numbered, showing all of the Gross Revenue of Concessionaire and City shall have the right through its representative, during normal business hours, to inspect cash books and records, including State of Texas sales tax return records. The Concessionaire agrees that all such records and instruments are and will be made available to the City of San Antonio for at least a four-year period following the end of each annual period of this Agreement.

6.10 Subsequent to each contract year, Concessionaire shall employ an independent Certified Public Accountant who shall furnish a written audit to the City stating that in his opinion the Minimum Annual Guarantee and the Percentage Payment paid by the Concessionaire to the City during the preceding year (July 1 through June 30) pursuant to this Agreement were made in accordance with the applicable terms of this Agreement. Such statement shall also contain a list of the Gross Revenue as shown on the books and records of Concessionaire which were used to compute the Percentage Payments made to City during the period covered by the statement. This written audit and statement shall be delivered to the City within one hundred and twenty (120) days of the anniversary date of the contract year or October 31. If the written audit shows that

Concessionaire owes a balance of fees or charges, such fees and charges shall be delivered at the same time as the written audit.

6.11 Without waiving any other right of action available to the City in the event of default in payment of the fees and charges payable hereunder, in the event that Concessionaire is delinquent for a period of fifteen (15) days or more in paying to the City any fees payable to the City pursuant to this Agreement, the Concessionaire shall pay to the City interest thereon at the rate of ten percent (10%) per annum from the date such item was due and payable until paid. Such interest shall not accrue with respect to disputed items being contested in good faith by Concessionaire.

6.12 Prior to commencement of operations hereunder, the City at its cost may require an independent Certified Public Accountant and /or the City review the revenue control system (s) to be utilized by Concessionaire, in conformance with Paragraphs 19 through 21, Section 640, American Institute of Certified Accountants Statement of Auditing Standards. At the end of each twelve (12) months of operation during the term of this Agreement, the City may require that said independent Certified Public Accountant and/or the City conduct necessary tests for compliance with the revenue control system, in conformance with the same provisions of the Statement of Auditing standards. Copies of all reports from the independent Certified Public Accountant shall be provided to the City and to Concessionaire. The City may require the Concessionaire to provide copies of internal control reports used by the Concessionaire.

6.13 The City reserves the right to audit the Concessionaire's books and records of receipts at any time for the purpose of verifying the Gross Revenue hereunder. If, as a result of such audit, it is established that the Concessionaire has understated the Gross Revenue received by it from all operations on the Assigned Areas by three percent (3%) or more (after the deductions and exclusions provided for herein) of the amount paid to the City during the previous annual reporting period under this Agreement, all reasonable expenses of said audit shall be borne by the Concessionaire. Any additional percentage fees due shall forthwith be paid by the Concessionaire to the City with interest thereon at ten percent (10%) per annum from the date such additional percentage fees became due.

Article VII.

OPERATIONAL STANDARDS

7.1 The Concessionaire will be required to be open or available for business at least sixteen (16) hours per day, seven (7) days per week, between the hours of seven o'clock (7:00) a.m. and eleven o'clock (11:00) p.m. It is expressly understood that the hours of operations required by the City may be up to twenty-four (24) hours per day and any change in the hours of service required by the City hereunder shall be delivered to the Concessionaire in writing at least five (5) days prior to the effective date thereof.

7.2 The Concessionaire agrees to operate and maintain the Assigned Areas in a safe, clear, orderly and inviting condition. The Concessionaire agrees to furnish and maintain a standard of service and quality comparable to that of similar high-quality facilities in the San Antonio area, while at the same time striving to maximize revenues. Concessionaire will provide the public an adequate supply and variety of late model and low mileage Motor Vehicles which shall be maintained by the Concessionaire in first class operating and mechanical condition and repair;

and in clean and attractive condition. Concessionaire agrees that it will at no time use Motor Vehicles whose year model is more than (2) years older than the current model. The City reserves the right to disapprove of any Motor Vehicle supplied by Concessionaire for public use which is more than two (2) years older than the current year model. Notice of such disapproval shall be submitted to Concessionaire by the Director in writing with the reasons therefor and Concessionaire shall take immediate action to withdraw such unsatisfactory Motor Vehicle from service.

7.3 Concessionaire shall take all reasonable measures in a proper and ethical manner to maintain, develop and increase the business conducted by it hereunder and shall not divert or cause to be diverted any car rental business from the Airport. Concessionaire shall not, however, permit its agents, servants or employees to engage in solicitation of services offered by Concessionaire on or about the Airport nor shall Concessionaire engage in open or public disputes or conflicts tending to be incompatible with the best interests of the public at the Airport. The City shall be the sole judge as to whether the conduct of Concessionaire's representatives in the solicitation of business constitutes a violation of this paragraph. The City shall have the right to resolve all such disputes or conflicts, and its determination thereof concerning the manner in which Concessionaire shall thereafter operate shall be binding upon Concessionaire.

7.4 The Concessionaire agrees to assign a qualified representative to be in charge of the Assigned Areas, services and facilities and to be available to insure the proper conduct of the Concessionaire's operation.

7.5 The operations of Concessionaire, its employees, invitees, suppliers and contractors shall be conducted in an orderly and proper manner so as not to annoy, disturb or be offensive to others. All employees of the Concessionaire must conduct themselves at all times in a courteous manner toward the public and in accordance with the rules, regulations and policies developed by the Concessionaire.

7.6 Courtesy shuttle vehicles of Concessionaire shall pick up and discharge its customers only at such locations as shall be designated by City from time to time.

Article VIII.

MAINTENANCE

8.1 City shall not be required to make repairs or improvements of any kind at the Concessionaire's Assigned Area if said repairs or improvements are the result of any willful or negligent act of Concessionaire, its employees or those under the control of Concessionaire. Further, the City shall not be required to make repairs or improvements of any kind at the Concessionaire's Assigned Area except for structural repairs to the roof, floor and exterior walls and windows of the Airport Terminal. Should City be required to make any repairs or improvements under the provisions herein contained, City shall not be liable to Concessionaire for any damage caused by disrepair of any kind until City has had reasonable opportunity to perform repairs after being notified in writing of the need for same by Concessionaire.

8.2 The Concessionaire agrees to provide at its own expense such cleaning services and supplies as may be necessary or required in the operation and maintenance of its Assigned Area.

The Concessionaire also agrees to keep and maintain the interior of its Assigned Area in a clean, neat, sanitary, and attractive condition.

8.3 Moreover, the Concessionaire agrees to maintain and make necessary repairs, structural or otherwise, to the interior of all of its Assigned Area and the fixtures and equipment therein and appurtenances thereto, including, without limitation, the interior windows, doors and entrances, storefronts, signs, show cases, floor coverings, interior walls and ceiling, the interior surface, the surfaces of interior columns exclusive of structural deficiencies, any columns erected by Concessionaire, partitions and lighting within its Assigned Area and serving Concessionaire. Concessionaire shall be responsible for structural repairs only when such are required as a result of concessionaire's actions. Prior to making any repairs other than to its own equipment, all work and the vendors that will be performing such work must be approved by the Director or his representative.

8.4 All repairs done by the Concessionaire or on its behalf shall be of first class quality in both materials and workmanship. All repairs will be made in conformity with the rules and regulations prescribed from time to time by federal, state or local authority having jurisdiction over the work in the Concessionaire's Assigned Area.

8.5 The Director or his duly appointed representative shall have the right to enter the Concessionaire's Assigned Area to:

- a. Inspect the Assigned Area at reasonable intervals during the Concessionaire's regular business hours or at any time in case of emergency to determine whether the Concessionaire has complied with and is complying with the terms and conditions of this Agreement. The Director may, at his discretion, require the Concessionaire to effect repairs at the Concessionaire's own cost.
- b. Perform any and all things which the Concessionaire is obligated to and has failed after reasonable written notice to do so, including: maintenance, repairs and replacements to the Concessionaire's Assigned Area. The cost of all labor and materials required to complete the work will be paid by the Concessionaire to the City within ten (10) days following demand by the Director for said payment subject to verification by Concessionaire of amounts incurred and work performed.
- c. Exercise the City's police power.

8.6 If the Concessionaire refuses or neglects to undertake the maintenance, repair or replacements requested in writing by the Director; or if the City is required to make any repairs necessitated by the negligent acts or omissions of the Concessionaire, its employees, agents, servants or licensees, the City shall have the right to make such repairs on behalf of and for the Concessionaire. Such work shall be paid for by the Concessionaire within ten (10) days following written demand by Director for said payment at the City's standard rates plus any overhead which may be determined by the Director.

8.7 In a timely manner, the Concessionaire will provide for the adequate sanitary handling and removal of all trash, garbage and other refuse caused as a result of the Concessionaire's operations. The Concessionaire agrees to provide and use suitable covered receptacles for all

garbage, trash and other refuse in its Assigned Area. Piling of boxes, cartons, barrels or similar items shall not be permitted in a public area.

8.8 The City shall provide, or cause to be provided, during the term of this Agreement, security protection similar to that afforded to other Concessionaires at the Airport, and it will issue and enforce rules and regulations with respect to all portions of the Airport. The Concessionaire shall have the right, but shall not be obligated, to provide such additional or supplemental public protection as it may desire at its own cost. Such right, whether or not exercised by the Concessionaire, shall not in any way be construed to limit or reduce the obligations of Concessionaire hereunder. Any extra security protection shall be subject to the authority granted to the Airport's police force and shall in no way hinder or interfere with their duties.

8.9 The Concessionaire agrees to provide adequate control of rodents and insects and other pests in its Assigned Area. In the event that, after five (5) days written notice to Concessionaire, Director determines that the Concessionaire's rodent, insect and pest control program is not acceptable or sufficient, he may seek to control such rodents, insects and pests by other means. The Concessionaire agrees to reimburse the City no later than ten (10) days following written demand by City for such expenses as it may encounter due to conditions within the Concessionaire's Assigned Area.

Article IX.

COMPLIANCE

9.1 The Concessionaire, its officers, agents, servants, employees, contractors, licensees and any other person whom the Concessionaire controls or has the right to control shall comply with all present and future laws, ordinances, orders, directives, rules, and regulations of the United States of America, the State of Texas, the City of San Antonio, and their respective agencies, departments, authorities or commissions which may either directly or indirectly affect the Concessionaire or its operations on or in connection with the premises of the Airport.

9.2 Concessionaire shall pay, on or before their respective due dates, to the appropriate collecting authority, all federal, state, and local taxes which are now or may hereafter be levied upon the premises, or upon Concessionaire, or upon the business conducted on the premises, or upon Concessionaire's property used in connection therewith, provided, however, that the Concessionaire may at its sole expense dispute and contest same and in such case such disputed item need not be paid until finally adjudged to be valid. Concessionaire shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Concessionaire.

9.3 Concessionaire shall pay wages that are not less than the minimum wages required by federal and state statutes and city ordinances, to persons employed in its operations hereunder.

9.4 This Agreement is governed by the laws of Texas. Any disputes relating to this Agreement must be resolved in accordance with the laws of Texas.

Article X.

ASSIGNMENT AND SUBLEASING

10.1 Concessionaire shall not assign this Agreement or allow same to be assigned by operation of law or otherwise without the prior written consent of City which may be given only by or pursuant to an ordinance enacted by City Council of San Antonio, Texas provided, however, that the foregoing shall not apply to and shall not prevent the assignment of this Agreement to any corporation with which Concessionaire may merge or consolidate or which may succeed to a controlling interest in the business of Concessionaire.

10.2 Concessionaire shall not sublet the Assigned Areas or any part thereof without first having obtained the written consent of the Director. Requests for subleases shall be submitted to the Director prior to the effective date thereof and shall be accompanied by a copy of the proposed sublease agreements and of all agreements collateral thereto. The identity of the proposed sublessee, the area or space to be subleased, the rental to be charged, the type of business to be conducted, reasonable financial history, and all other information requested by the Director shall be specified in writing by Concessionaire.

10.3 Each transfer, assignment or subletting to which there has been consent shall be by instrument in writing, in form satisfactory to City and shall be executed by the transferee, assignee or sublessee who shall agree in writing for the benefit of City to be bound by and to perform the terms, covenants, and conditions of this Agreement. Four executed copies of such written instrument shall be delivered to the Director. Failure to first obtain in writing City's consent or failure to comply with the provisions herein contained shall operate to prevent any such transfer, assignment or subletting from becoming effective.

10.4 Should the assignment of this Agreement be approved by City and to the extent that such assignee assumes Concessionaire's obligation hereunder, Concessionaire shall by virtue of such assignment be released from such obligation. Should the subletting of the Assigned Areas or any part thereof be approved by City, however, Concessionaire agrees and acknowledges that it shall remain fully and primarily liable under this Agreement, notwithstanding any such sublease and that any such sublessee shall be required to attorn to City under the terms of this Agreement.

10.5 The receipt by City of rent from an assignee, subtenant or occupant of the Assigned Areas shall not be deemed a waiver of the covenant in this Agreement against assignment and subletting or an acceptance of the assignee, subtenant or occupant as a tenant or a release of Concessionaire from further observance or performance by Concessionaire of the covenants contained in this Agreement. No provision of this Agreement shall be deemed to have been waived by City unless such waiver be in writing, signed by the Director.

10.6 In no case may the activities, uses, privileges and obligations authorized herein or the Assigned Areas or any portion thereof be assigned, for any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by the Concessionaire.

Article XI.

INSURANCE REQUIREMENTS

11.1 Any and all employees, representatives, agents or volunteers of **CONCESSIONAIRE** while engaged in the performance of any work required by the **CITY** or any work related to a Lease of space, License Agreement, or Concession Agreement with the **CITY** shall be considered employees, representatives, agents or volunteers of **CONCESSIONAIRE** only and not of the **CITY**. Any and all claims that may result from any obligation for which **CONCESSIONAIRE** may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of **CONCESSIONAIRE**.

11.2 Prior to the commencement of any work under this **AGREEMENT**, **CONCESSIONAIRE** shall furnish an original completed Certificate(s) of Insurance to the **CITY'S** Director, Aviation Department and City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information reference or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the **CITY**. The **CITY** shall have no duty to pay or perform under this **AGREEMENT** until such certificate shall have been delivered to the **CITY'S** Director, Aviation Department and the City Clerk's Office, and no officer or employee shall have authority to waive this requirement. If a Concessionaire has been approved as a self-insurer under the Texas Motor Vehicle Safety Responsibility Act and complies with the City of San Antonio Self-Insurance Requirements for Vehicles Permitted for Hire set forth in Exhibit 5 hereto, City may accept the Concessionaire's certificate of self-insurance as equivalent to, and, substitute for, the Business Automobile Liability insurance above required. Notwithstanding such acceptance, if any, City in its sole discretion reserves the right to rescind such acceptance, if any, City in its sole discretion reserves the right to rescind such acceptance or to amend the terms and conditions set forth in Exhibit 5 upon the provision to Concessionaire of thirty (30) days advance notice thereof.

11.3 The **CITY** reserves the right to review the insurance requirements of this section during the effective period of the Lease Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Lease Agreement, but in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.

11.4 A **CONCESSIONAIRE'S** financial integrity is of interest to **CITY**, therefore, subject to right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **CONCESSIONAIRE** shall obtain and maintain in full force and effect for the duration of the Lease Agreement, and any extension hereof, at **CONCESSIONAIRE'S** sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-or better by A.M. Best Company and/or otherwise acceptable to the **CITY**, in the following types and amounts:

	<u>TYPE</u>	<u>AMOUNT</u>
1.	Workers' Compensation and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2.	Commercial General (Public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Broad Form Contractual Liability d. Products/completed operations e.* Broad form property damage, to include fire legal liability f. Personal Injury g.* Explosion, collapse, underground	For Bodily Injury and Property Damage of \$1,000,000 per occurrence \$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage
3.	Comprehensive Automobile Liability* a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.

*If Applicable

11.5 The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the **CITY**, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by the **CITY**, the **CONCESSIONAIRE** shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

11.6 **CONCESSIONAIRE** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- 11.6.1 Name the **CITY** and its officers, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability policies;
- 11.6.2 Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;

11.6.3 Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the **CITY**.

11.7 **CONCESSIONAIRE** shall notify the **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the **CITY** at the following address:

City of San Antonio
Department of Aviation
9800 Airport Boulevard
San Antonio, Texas 78216

City of San Antonio
City Clerk's Office
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

11.8 If **CONCESSIONAIRE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Lease Agreement. Procuring of said insurance by the **CITY**, however, is not the exclusive remedy for failure of **CONCESSIONAIRE** to maintain said insurance or secure said endorsements. In addition to any other remedies the **CITY** may have upon **CONCESSIONAIRE'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **CONCESSIONAIRE** to stop work hereunder, and/or withhold any payment(s) which become due to **CONCESSIONAIRE** hereunder until **CONCESSIONAIRE** demonstrates compliance with the requirements hereof.

11.9 Nothing herein contained shall be construed as limiting in any way the extent to which **CONCESSIONAIRE** may be held responsible for payments of damages to persons or property resulting from **CONCESSIONAIRE'S** or its subcontractors' performance of the work covered under this Lease Agreement.

11.10 All personal property placed in the Leased Premises shall be at the sole risk of **CONCESSIONAIRE**. **CITY** shall not be liable and **CONCESSIONAIRE** waives all claims for any damage either to the person or property of **CONCESSIONAIRE** or to other persons due to the Leased Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; due to the happening of any accident in or about said Leased Premises. **CONCESSIONAIRE** shall save and hold harmless **CITY** from any claims arising out of damage to **CONCESSIONAIRE'S** property or damage to **CONCESSIONAIRE'S** business, including subrogation claims by **CONCESSIONAIRE'S** insurers.

11.12 Performance Bond – Concessionaire agrees to post with City, no later than fourteen (14) days following execution of this Agreement, and maintain throughout the term of this Agreement, either an irrevocable letter of credit or a performance bond in the amount of fifty percent (50%) of the Minimum Annual Guarantee. The performance bond or irrevocable letter of credit shall insure the full and faithful performance by Concessionaire of all the covenants, terms and conditions of this Agreement, shall stand as security for payment by Concessionaire of all valid claims by the City under this Agreement and shall be in form and content acceptable to the Director.

Article XII.

INDEMNITY

12.1 Concessionaire covenants and agrees to **FULLY INDEMNIFY** and **HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including, but not limited to, personal injury or death and properties damage, made upon the **CITY** directly arising out of, resulting from or related to, **CONCESSIONAIRE'S** activities under this **AGREEMENT**, any acts of omissions of **CONCESSIONAIRE**, any agent, officer, director, representative, employee, licensee, contractor or subcontractor or volunteer of **CONCESSIONAIRE**, and its respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this **AGREEMENT**, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.** The provisions of this **INDEMNIFICATION** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **CONCESSIONAIRE** shall promptly advise the **CITY** in writing of any claim or demand against the **CITY** or **CONCESSIONAIRE** known to **CONCESSIONAIRE** related to or arising out of **CONCESSIONAIRE'S** activities under this **AGREEMENT** and shall see to the investigation of and defense of such claim or demand at **CONCESSIONAIRE's** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **CONCESSIONAIRE** of any of its obligations under this Article.

It is the **EXPRESS INTENT** of the parties to this **AGREEMENT**, that the **INDEMNITY** provided for in this Article is **AN INDEMNITY EXTENDED BY CONCESSIONAIRE TO INDEMNIFY, PROTECT AND HOLD HARMLESS THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE**, provided however, that the **INDEMNITY** provided for in this Article shall apply only when the **NEGLIGENT ACT** of the **CITY** is a **CONTRIBUTORY CAUSE** of the resultant injury, death, or damage, and shall have no application when the **NEGLIGENT ACT OF THE CITY** is the sole cause of the resultant injury, death, or damage. **CONCESSIONAIRE** further **AGREES TO DEFEND, AT ITS OWN EXPENSE**, and **ON BEHALF OF THE CITY AND IN THE NAME OF CITY**, any claim or litigation brought against **CITY** and its elected officials, employees, officers, directors, and representatives in connection with any such injury, death, or damage for which this **INDEMNITY** shall apply, as set forth above.

Article XIII.

DEFAULT BY CITY

13.1 The following contingencies shall be a condition of default by City:

- a. The permanent abandonment of the Airport.
- b. The issuance by any court of competent jurisdiction of any injunction preventing or restraining the use of the Airport in such a manner as to substantially restrict the Concessionaire from conducting its Car Rental Concession and the remaining in force of such injunction for at least sixty (60) days.
- c. The breach by the City of any of the terms, covenants, or conditions of this Agreement to be kept, performed, and observed by the City, and the failure of the City to remedy such breach for a period of sixty (60) days after written notice from the Concessionaire of the existence of such breach has been received by City or if more than sixty (60) days shall be required because of the nature of such breach, if City shall fail within the said sixty (60) day period to commence and thereafter diligently proceed to cure such default.
- d. The assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport and its facilities in such a manner as to substantially restrict the Concessionaire from conducting its Car Rental Concession if such restriction continues for a period of three (3) months or more.

13.2 In the event any condition of default shall occur (notwithstanding any waiver, license, or indulgence granted by Concessionaire with respect to any condition of default in any form or instance; and notwithstanding and any rights and interests thereby created to be terminated) Concessionaire may seek any and all available damages or remedies at law or in equity, whether or not herein stated.

Article XIV.

DEFAULT BY CONCESSIONAIRE

14.1 Each of the following shall constitute an event of default by Concessionaire:

- (a) Concessionaire shall fail to pay any rent as provided for in this Agreement and such failure shall continue for a period of ten (10) days after receipt by Concessionaire of written notice of such failure.
- (b) Concessionaire shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained, and on Concessionaire's part to be performed or in any way observed, and if such neglect or failure should continue for a period of thirty (30) days after receipt by Concessionaire of written notice of such neglect or failure, or if more than thirty (30) days shall be required because of the nature of the default, if Concessionaire shall fail within said thirty (30) day period to commence and thereafter diligently proceed to cure such default.
- (c) Concessionaire shall become insolvent, shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors, shall file a voluntary petition in bankruptcy or a petition to answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy law or under any other law or

statute of the United States or of any state thereof, or shall consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property.

- (d) An Order for Relief shall be entered at the request of Concessionaire or any of its creditors under the federal bankruptcy or reorganization laws or under any law or statute of the United States or any state thereof.
- (e) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against Concessionaire and shall not be dismissed within thirty (30) days after the filing thereof.
- (f) By or pursuant to or under the authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency, or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Concessionaire and such possession or control shall continue in effect for a period of fifteen (15) days.
- (g) Concessionaire shall become a corporation in dissolution or voluntarily or involuntary forfeit its corporate charter.
- (h) The rights of Concessionaire hereunder shall be transferred to, pass to, or devolve upon, by operation of law or otherwise, any other person, firm, corporation, or other entity, by its connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other proceedings or occurrence described in paragraphs (c) through (g) of this Provision 13.1
- (i) Concessionaire shall fail to take possession of its Assigned Areas.
- (j) Concessionaire shall abandon all or any part of its Assigned Areas or shall discontinue the conduct of its operations in all or any part of its Assigned Areas.

14.2 In the event any condition of default shall occur (notwithstanding any waiver, license or indulgence granted by City with respect to any condition of default in any form or instance) City, then or at any time thereafter, shall have the right, at its election, either to terminate this Agreement by giving at least five (5) days written notice to Concessionaire at which time Concessionaire will then quit and surrender the Assigned Areas to City, but Concessionaire shall remain liable as hereinafter provided, or, upon and take possession of the premises (or any part thereof in the name of the whole), without demand or notice, and repossess the same as of the City's former estate, expelling Concessionaire and those claiming under Concessionaire, forcibly, if necessary, without prejudice to any remedy for arrears of rent or preceding breach of covenant and without any liability to Concessionaire or those claiming under Concessionaire for such repossession.

14.3 City's repossession of the Assigned Areas shall not be construed as an election to terminate this Agreement nor shall it cause a forfeiture of rents or other charges remaining to be paid during the balance of the term hereof, unless a written notice of such intention be given to Concessionaire, or unless such termination is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by City because of any default by Concessionaire, City may at any time after such reletting elect to terminate this Agreement for any such default.

14.4 Upon repossession, City shall have the right (at its election and whether or not this Agreement shall be terminated) to relet the Assigned Areas or any part thereof for such period or periods (which may extend beyond the term of this Agreement) at such rent or rents and upon such other terms and conditions as City may, in good faith, deem advisable. City shall in no event be liable and Concessionaire's liability shall not be affected or diminished in any way whatsoever for failure to relet the Assigned Areas, or in the event same are relet, for failure to collect any rentals or other sums due under such reletting.

14.5 In the event that City shall elect to relet, then rentals received by City from such reletting shall be applied: first, to the payment of any indebtedness other than rent due hereunder from Concessionaire to City; second, to the payment of any reasonable cost for such reletting; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by City and applied in payment of future rent as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Concessionaire hereunder, then Concessionaire shall pay such deficiency to City. Such deficiency shall be calculated and paid monthly. Concessionaire shall also pay to City, as soon as ascertained, any costs and expenses incurred by City in such reletting not covered by the rentals received from such reletting of the Assigned Areas.

14.6 If City shall terminate this Agreement or take possession of the Assigned Areas by reason of a condition of default, Concessionaire and those holding under Concessionaire, shall no later than fourteen (14) days following such termination or possession remove its goods and effects from the Assigned Areas. If Concessionaire or any such claimant shall fail to effect such removal, City may, at its option, exercise the rights set forth in Section 5.8 herein or may without liability to Concessionaire or those claiming under Concessionaire, remove such goods and effects and may store the same for the account of Concessionaire or of the owner thereof at any place selected by City, or, at City's election, and upon given 15 days written notice to Concessionaire of date, time and location of sale, City may sell the same at public auction or private sale on such terms and conditions as to price, payment and otherwise as City in its sole discretion may deem advisable. If, in City's judgment, the cost of removing and storing or the cost of removing and selling any such goods and effects exceeds the value thereof or the probable sale price thereof, as the case may be, City shall have the right to dispose of such goods in any manner City may deem advisable.

14.7 Concessionaire shall be responsible for all costs of removal, storage and sale, and City shall have the right to reimburse itself from the proceeds of any sale for all such costs paid or incurred by City. If any surplus sale proceeds shall remain after such reimbursement City may deduct from such surplus any other sum due to City hereunder and shall pay over to Concessionaire any remaining balance of such surplus sale proceeds.

14.8 If City shall enter into and repossess the Assigned Areas for reason of the default of Concessionaire in the performance of any of the terms, covenants or conditions herein contained, then and in that event Concessionaire hereby covenants and agrees that Concessionaire will not claim the right to redeem or reenter the Assigned Areas to restore its operations hereunder, and Concessionaire hereby waives the right to such redemption and reentrance under any present or future law, and hereby further, for any party claiming through or under Concessionaire, expressly waives its right, if any, to make payment of any sum or sums of rent, or otherwise, of which

Concessionaire shall have made default under any of the covenants of this Agreement and to claim any subrogation of the rights of Concessionaire under these presents, or any of the covenants thereof, by reason of such payment.

14.9 All rights and remedies of City herein created or otherwise existing at law are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as deemed advisable.

14.10 If proceedings shall at any time be commenced for recovery of possession as aforesaid and compromise or settlement shall be effected either before or after judgment whereby Concessionaire shall be permitted to retain possession of the Assigned Areas, then such proceeding shall not constitute a waiver of any condition or agreement contained herein or of any subsequent breach thereof or to this Agreement.

14.11 Any amount paid or expense or liability incurred by City on account of Concessionaire according to the provisions of this Agreement may be deemed to be additional rental and the same may, at the option of City, be added to any rent then due or thereafter falling due hereunder.

14.12 The Concessionaire agrees to keep all insurance policies in effect through surrender of its Assigned Areas.

Article XV.

HOLDING OVER

15.1 It is agreed and understood that any holding over of Concessionaire after the termination of this Agreement shall not renew and extend same but shall operate and be construed as a tenancy from month to month. During any period of holding over, Concessionaire shall pay to the City rental payments in accordance with the provisions of Paragraphs 6.1 through 6.3. Concessionaire shall be liable to the City for all loss or damage on account of any holding over against the City's will after the termination of this Agreement, whether such loss or damage may be contemplated at this time or not. It is expressly agreed that acceptance of the foregoing payment by the City in the event that Concessionaire fails or refuses to surrender possession shall not operate to give Concessionaire any right to remain in possession nor shall it constitute a waiver by the City of its right to immediate possession.

Article XVI.

FIRE AND OTHER DAMAGE

16.1 In the event that structural or permanent portions of the building within an Assigned Area(s) shall be partially damaged by fire or other casualty, the Concessionaire shall give immediate notice thereof to the Director and the same shall be repaired at the expense of the City without unreasonable delay unless City determines that the damage is so extensive that repair or rebuilding is not feasible. From the date of such casualty until said area is so repaired, monthly payments hereunder shall abate in such proportion as may be reasonably determined by the Director whose determination shall be conclusive; provided, however, that if an area shall be so

slightly injured in any such casualty as not to be rendered unfit for occupancy, the rent hereunder shall not cease or be abated during any repair period. In the event that the damage to an area should be so extensive as to render it untenable, the rent for such area shall cease until such time as it shall again be put in repair, but in the event of the area being damaged by fire or other casualty to such an extent as to render it necessary in the exclusive judgment of the City not to rebuild the same, then, this Agreement as it applies to said area shall cease and come to an end, and the rent hereunder shall be apportioned and paid up to date of such damage. If the City elects to rebuild said areas, the City shall notify Concessionaire of such intention within thirty (30) days of the date of the damage, otherwise, the Agreement as it applies to said area shall be deemed canceled and of no further force or effect.

16.2 The City's obligations to rebuild or repair under this Article shall in any event be limited to restoring said area to substantially the condition that existed prior to the commencement of improvements by Concessionaire and shall further be limited to the extent of the insurance proceeds available to City for such restoration. Concessionaire agrees that if the City elects to repair or rebuild as provided in this Article, then Concessionaire will proceed with reasonable diligence and at its sole cost and expense to rebuild, repair and restore its signs, fixture, furnishings, equipment, improvements and other items provided or installed by Concessionaire, in or about the Assigned Area in a manner and to a condition at least equal to that which existed prior to its damage or destruction.

Article XVII.

SECURITY

17.1 Where applicable, Concessionaire shall provide for the security of the Air Operations Area (A.O.A.) and/or Security Identification Display Areas (S.I.D.A.) to prevent entry or movement of unauthorized persons thereupon in accordance with Chapter 3, Section 3-23 of the City Code of San Antonio, Texas as such provision now exists or may be amended in the future. Where applicable, physical barriers to prevent access to A.O.A. and/or S.I.D.A. must be placed by Concessionaire upon the Assigned Areas and, in appropriate cases, supervised by Concessionaire during construction by Concessionaire upon the Assigned Areas.

17.2 Concessionaire shall comply with all rules, regulations, statutes, orders, directives or other mandates of the United States of America or of the State of Texas regarding security requirements or security measures upon the Airport.

17.3 Concessionaire shall comply with the mandates of the Federal Aviation Administration for background investigations of its personnel as such mandates now exist or as they may be changed, amended or replaced with new and different mandates in the future.

17.4 Concessionaire shall indemnify and hold harmless City, its officers and employees from any charges, fines or penalties that may be assessed or levied by any department or agency of the United States of America or of the State of Texas by reason of Concessionaire's failure to comply with any applicable security provisions and/or with any provision or requirement for compliance set forth in this Article XVI.

Article XVIII.

ATTORNEY'S FEES

18.1 In case either party hereto brings any action under this Agreement, and prevails in said action, then the prevailing party shall be entitled to recover from the party who does not prevail its court ordered reasonable attorney's fees incurred as a result of said action.

Article XIX.

AMENDMENT

19.1 This Agreement, together with the authorizing ordinance, constitutes the entire agreement between the parties. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

Article XX.

RELATIONSHIP OF PARTIES

20.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other such similar relationship, between the parties hereto. It is understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto creates a relationship other than the relationship of City and Concessionaire.

Article XXI.

CONFLICT OF INTEREST

21.1 Concessionaire acknowledges that it is informed that Texas law prohibits contracts between the City and its "officers" and employees", and that the prohibition extends to an officer and employee of City of San Antonio agencies such as City of San Antonio owned utilities and certain City boards and commissions, and to contracts with any partnership, corporation or other organization in which the officer or employee has an interest. Concessionaire certifies (and this Agreement is made in reliance thereon) that neither it nor any person having an interest in this Agreement is an officer or employee of the City of San Antonio or any of its agencies.

Article XXII.

APPROVALS BY

22.2 Whenever this Agreement calls for approval by the City, such approval shall be evidenced by the written approval of the Aviation Director of the City of San Antonio or the City Manager of the City of San Antonio or her designee.

Article XXIII.

GENERAL PROVISIONS

23.1 Nondiscrimination – The Concessionaire, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree: (1) that no person, on the grounds of race, color, creed, national origin, political ideas, sex, age, or physical or mental handicap, shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements and the furnishing of services, no person on the grounds of race, color national origin, creed, political ideas, sex, age, or physical or mental handicaps, shall be excluded from participation in , denied the benefits of, or otherwise be subjected to discrimination; (3) that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended; (4) that the Concessionaire shall use the Assigned Area in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended; (5) that should the City provide handicapped accessible ingress and egress in specific locations, Concessionaire shall not block or close or otherwise cause the accessway to be nonfunctional without providing alternative means of access approved in writing by the Director.

The Concessionaire shall furnish its accommodations and/or services on a fair, equal, and nondiscriminatory basis to all qualified users thereof, and it shall charge fair, reasonable and nondiscriminatory prices; however, the Concessionaire may be allowed to make reasonable discounts or other similar type of price reductions to purchasers on a non-discriminatory basis.

Noncompliance shall constitute a material breach hereof, and in the event of such noncompliance, within a reasonable period, the City shall have the right to terminate this Agreement.

23.2 Federal Aviation Act, Section 308 – Nothing herein contained shall be deemed to grant the Concessionaire any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act or the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, the Concessionaire shall have the right to possess the Assigned Area under the provisions of this Agreement.

23.3 Subordination to Agreements With the United States Government – This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the City and the United State Government, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to the City for airport purposes, or the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of

1958, as it has been amended from time to time. The City covenants that it has no existing agreements with the United States Government in conflict with the express provisions hereof.

23.4 Nonwaiver of rights – No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as a waiver of any subsequent default or any terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

23.5 Notices – Notices required herein may be given by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. Any such notice so mailed shall be presumed to have been received by the addressee seventy-two (72) hours after deposit of same in the mail. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until such change is made, notices to City shall be delivered as follows:

Aviation Director
San Antonio International Airport
9800 Airport Boulevard
San Antonio, Texas 78216

and to

City Clerk
P.O. Box 839966
San Antonio, TX 78283-3966

Notices to Concessionaire shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to Concessionaire at the address set forth beneath the signature of Concessionaire herein. If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

23.6 Captions – The headings of the several articles of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

23.7 Severability – If one or more clauses, sections, or provisions of this Agreement shall be held to be unlawful, invalid, or unenforceable, it is agreed that the remainder of the Agreement shall not be affected thereby.

23.8 Agent for Service of Process – It is expressly understood and agreed that if the Concessionaire is not a resident of the State of Texas, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event the Concessionaire does designate the Secretary of State, State of Texas, its agent for the purpose of service of process in any court action between it and the City arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the State of Texas for service upon a non-resident. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, Concessionaire may be personally served with such process out of this State by the registered mailing of such complaint and process to the Concessionaire at the address set forth herein. Any such service out of this State shall constitute valid service upon the Concessionaire as of the date of mailing to respond thereto. It is further expressly agreed that the Concessionaire is amenable to and hereby agrees to the process so served, submits to the jurisdiction, and waives any and all obligations and protest thereto, any laws to the contrary notwithstanding.

23.9 Waiver of Claims- The Concessionaire hereby waives any claim against the City of San Antonio and the State of Texas and its officers, or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit proceeding declaring this Agreement null, void or voidable, or delaying the same or any part hereof, from being carried out.

23.10 Right to Develop Airport – It is further covenanted and agreed that the City reserves the right to further develop or improve the Airport and all landing areas and taxiways as it may see fit, regardless of the desires or views of the Concessionaire and without interference or hindrance.

23.11 Incorporation of exhibits – All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

23.12 Incorporation of Required Provisions – The parties incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

23.13 Nonliability of Agents and Employees – No member, officer, agent, director or employee of the City or the Concessionaire shall be charged personally or held contractually liable by or to the other party under the terms and provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

23.14 Successors and Assigns Bound – This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.

23.15 Right to Amend- In the event that the Federal Aviation Administration or its successor requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, the Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required.

23.16 Time of Essence – Time is expressed to be of the essence of this Agreement.

23.17 Gender – Words of any gender used in this lease shall be held and construed to include any other genders and words in the singular number shall be held to include plural, unless the context otherwise requires.

23.18 Force Majeure – Neither the City nor the Concessionaire shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargos, shortage of material, act of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not within its control.

Article XXIV.

ENTIRE AGREEMENT

24.1 It is understood and agreed that this instrument contains the entire agreement between the parties hereto. It is further understood and agreed by Concessionaire that City and City's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by Concessionaire against City for, and City shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other written or parol agreement with City being expressly waived by Concessionaire, it being understood that the Charter of the City requires all agreements with the City to be in writing and adopted by an ordinance.

The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

The parties hereto acknowledge that they thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel necessary for them for a full and complete understanding of all rights and obligations herein; and, having so done, do hereby execute this Agreement on the day and year first above mentioned.

COMPANY NAME

CITY OF SAN ANTONIO

By: _____

By: _____
City Manager

Printed or typed name:

Title: _____

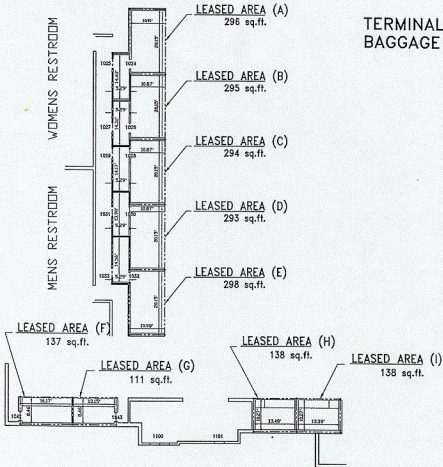
Attest: _____
City Clerk

Address:

Federal Tax Identification Number

APPROVED: _____
City Attorney

TERMINAL 1 BAGGAGE CLAIM



F.I.S.

- A. National/Alamo
- B. Enterprise
- C. Hertz
- D. Avis
- E. Dollar
- F. Vacant
- G. Thrifty
- H. Advantage
- I. Budget



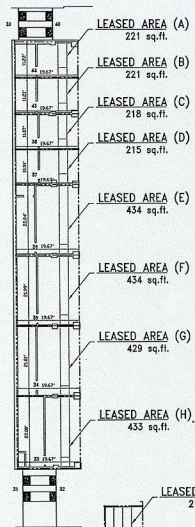
SCALE: 1"=20'

APRIL 04, 2003

EXHIBIT 1
for premises leased to
at
SAN ANTONIO
INTERNATIONAL AIRPORT
Lease No. _____

J. FISHER

TERMINAL 2 BAGGAGE CLAIM



- A. Vacant
- B. Thrifty
- C. Budget
- D. Dollar
- E. National/Alamo
- F. Hertz
- G. Enterprise
- H. Avis
- I. Advantage



SCALE: 1"=20'

APRIL 04, 2003

EXHIBIT 2
for premises leased to

at
SAN ANTONIO
INTERNATIONAL AIRPORT
Lease No. _____

J. FISHER

EXHIBIT 3

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

For Use with Contracts Over \$200,000

1. **Small Business Participation**

Pursuant to Ordinance No. 96754, it is the policy of the City of San Antonio to involve Small, Minority, Women and African-American Owned Business Enterprises (S/M/W/AABE) to the greatest extent feasible in the City's discretionary contracts. The intent and purpose of the policy is to ensure that S/M/W/AABE firms have the opportunity to compete for City contracts without discrimination on the basis of race, color, religion, national origin, age, sex or handicap. To accomplish to objectives of the SBEDA policy, the City has established specific goals for local S/M/W/AABE participation in this contract.

2. **DEFINITIONS** related to the Small Business Economic Development Advocacy Provisions:

- a. **SBEDA Program:** Small Business Economic Development Advocacy Program designed to promote the utilization and participation of Local, Minority, Women, and African-American Owned Business Enterprises in City sponsored contract opportunities.
- b. **Small Business Enterprises (SBE):** a corporation, partnership, sole proprietorship or other legal entity, for the purpose of making a profit, which is independently owned and operated and which meets the U.S. Small Business Administration (SBA) size standard for small business. All firms meeting this threshold will be considered an SBE.
- c. **Local Business Enterprise (LBE):** a corporation, partnership, sole proprietorship, or other legal entity for the purpose of making a profit, which is headquartered within Bexar County for at least one year. For a branch office of a non-headquartered business to qualify as an LBE, the branch office must be located in Bexar County for at least one-year and employ a minimum of ten (10) residents of Bexar County or employ Bexar County residents for at least twenty-five (25%) of the entire company workforce for use at the local branch office.
- d. **Minority Business Enterprise (MBE):** a sole proprietorship, partnership, or corporation owned, operated, and controlled by a minority group member(s) who has at least 51% ownership. The minority group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an MBE, the enterprise shall be headquartered in Bexar County for any length of time, or shall be doing business in a locality or localities from which the City regularly solicits, or receives bids on or proposals for, City contracts within the MBES's category of contracting for at least one year.
- e. **Woman Business Enterprise (WBE):** a sole proprietorship, partnership, or corporation owned, operated and controlled by women who have at least 51%

ownership. The woman or women must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as a WBE, the enterprise shall be headquartered in Bexar County for any length of time or shall be doing business in a locality or localities from which the City regularly solicits or receives bids on or proposals for, City contracts within the WBE's category of contracting for at least one year.

- f. **African-American Business Enterprise (AABE)**: a sole proprietorship, partnership, or corporation owned, operated and controlled by an African-American group member(s) who has at least 51% ownership. The African American Group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an AABE, the enterprise shall be headquartered in Bexar County for any length of time or shall be doing business in a locality or localities from which the City regularly solicits, or receives bids on or proposals for, City contracts within the AABE's category of contracting for at least one year.

3. **Goals for Small Business Participation**

The goals for the utilization and participation of SBE-MBE-WBE-AABE businesses on this contract are as follows:

MBE	31%
WBE	10%
AABE	2.2%
SBE	50%

Please note that a small business could be classified in multiple categories and thus their utilization could in theory be counted in each category of goals. For example, **Prime Contractor X** submits a proposal, which specifies that they intend to subcontract with Subcontractor A for 10% of the contract. Subcontractor A is certified by the City as an SBE and MBE (a male-owned Hispanic Business owner can be certified as an SBE and MBE). **Prime Contractor X** also intends to subcontract with Subcontractor B for 13% of the contract. Subcontractor B is certified by the City as SBE, MBE and a WBE (a female-owned Hispanic Business owner can be certified as SBE, MBE and WBE). In addition, **Prime Contractor X** also intends to subcontract 10% of the contract to Subcontractor C—a City certified SBE and AABE (a male-owned African-American business owner can be certified as both a MBE and as a AABE Business). **Prime Contractor X** is also classified as a local SBE. **Prime Contractor X's** compliance with the SBEDA goals under this scenario would be as follows:

	City's SBEDA Goals	Prime Contractor X's Compliance
MBE	31%	33%
WBE	10%	13%
AABE	2.2%	10%
SBE	50%	100%

Under this scenario, the contractor would be in full compliance with the SBEDA policy.

Another example regarding compliance with the policy is as follows: **Prime Contractor Y** submits a proposal, which specifies that they intend to partner through a joint-venture agreement with Company D. Company D is certified by the City as both an SBE and MBE (a male-owned Hispanic Business—certified as an SBE and MBE). As part of their joint-venture agreement, Company A will perform on 32.5% of the contract. **Prime Contractor Y** also intends to subcontract 13% of the contract with Subcontractor F. Subcontractor F is a City certified SBE/MBE/WBE and AABE business. **Prime Contractor Y** is also classified as a local SBE.

Prime Contractor Y compliance with the SBEDA goals would be as follows:

	City's SBEDA Goals	Prime Contractor X's Compliance
MBE	31%	45.5%
WBE	10%	13%
AABE	2.2%	13%
SBE	50%	100%

Under this scenario, the contractor would be in full compliance with the SBEDA policy.

4. **Good Faith Effort Required**

Proposals shall include a Good Faith Effort Plan (GFEP—ATTACHED). The GFEP shall include specific documentation to utilize local, small, MBE-WBE-AABE businesses in a percentage, which equals or exceeds the above goals. **Any proposal that does not include**

the GFEP and does not receive approval of the GFEP by the Economic Development Department shall be declared non-responsive, and excluded from consideration.

5. **MBE-WBE-AABE Certification Required**

Only companies certified as MBE, WBE, or AABE through the South Central Texas Regional Certification Agency (SCTRCA), or as approved by the City of San Antonio Director of Economic Development, can be applied towards the contracting goals. Proof of certification must be submitted.

6. **SBEDA Information**

Interested contractors/respondents are encouraged to contact the Small Business Outreach Office for information regarding the City's SBEDA Policy. Please call (210) 207-3915 or FAX: (210) 207-8151.

GOOD FAITH EFFORT PLAN

NAME OF COMPANY: _____

PROJECT NAME: _____

1. Indicate all MBE-WBE-AABE-SBE subcontractors proposed for this contract. (Use additional sheets as needed.)

[illegible]

NOTE: If MBE-WBE-AABE-SBE contracting goals were met, skip to #9.

2. If MBE-WBE-AABE-SBE contracting goals were not achieved in a percentage that equals or exceeds the City's goals, please give explanation.

3. List all MBE-WBE-AABE-SBE Listings or Directories utilized to solicit participation.

4. List all contractor associations and other associations solicited for MBE-WBE-AABE-SBE referrals.

5. Discuss all efforts aimed at utilizing MBE-WBE-AABE-SBEs.

6. Indicate advertisement mediums used for soliciting bids from MBE-WBE-AABE-SBEs.

Good Faith Effort Plan

7. List all MBE-WBE-AABE-SBE bids received but rejected. (Use additional sheets as needed.)

COMPANY NAME	MBE-WBE-AABE-SBE CERTIFICATION NUMBER	HUE (Y/N)	REASON FOR REJECTION

8. Please attach a copy of your company's MBE-WBE-AABE-SBE policy.
9. Name and phone number of person appointed to coordinate and administer the Good Faith Efforts of your company on this project.

10. This Good Faith Effort Plan is subject to the Economic Development Department's approval.

SIGNATURE OF AUTHORIZED OFFICIAL

TITLE OF OFFICIAL

DATE

PHONE

FOR CITY USE

Plan Reviewed By: _____

Recommendation: Approval _____ Denial _____

Action Taken: Approved _____ Denied _____

DIRECTOR OF ECONOMIC DEVELOPMENT

EXHIBIT 4
FEDERAL DBE PROGRAM REQUIREMENTS

**SAN ANTONIO INTERNATIONAL AIRPORT
CONCESSIONS DBE PROGRAM
49 CFR PARTS 23 AND 26**

OBJECTIVE/POLICY STATEMENT

The San Antonio International Airport has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U. S. Department of Transportation (DOT), 49 CFR Parts 23 and 26. The City of San Antonio has received federal financial assistance from the Department of Transportation and as a condition of receiving this assistance, the City of San Antonio has signed an assurance that it will comply with 49 CFR Parts 23 and 26.

It is the policy of the San Antonio International Airport that it will ensure that DBEs as defined in Parts 23 and 26, have an equal opportunity to receive and participate in DOT assisted contracts. It is our policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. To assist in the development of firms that can compete successfully in the market place outside the DBE Program.

DBE OBLIGATION

The San Antonio International Airport or its concessionaire agrees to ensure that DBEs as defined in 49 CFR Parts 23 and 26 have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard the San Antonio International Airport and its concessionaires shall not discriminate on the basis of race, color, national origin, gender, or disability in the award and performance of DOT-assisted contracts.

DBE GOAL

The DBE goal for this concession is 15%.

A firm submitting a proposal for this concession is asked to make good faith efforts to meet or exceed the goal for DBE participation. The DOT regulations require that overall concession goals be calculated consistent with the process in Section 26.45 for setting goals under DOT assisted projects (49 CFR Section 23.95 [a]). The San Antonio International Airport has applied the two-step process as outlined in 49 CFR Section 26.45. This two-step process consists of determining the relative availability

of DBEs ready, willing, and able to perform work for each “concession opportunity” that will occur during the goal period. A “concession opportunity” includes any of the following actions by the San Antonio International Airport.

1. Awarding a new concession agreement;
2. Exercising an option to renew an existing agreement; or
3. Making a material amendment to an existing agreement.

The San Antonio International Airport has utilized the following sources of data in determining our DBE goals.

1. DBE directories
2. List of proposers, or other firms who previously competed for a concession contract;
3. Information on DBEs and non-DBEs currently performing the same or a similar type of concession at San Antonio International Airport or other airports in the San Antonio International Airport’s market area.

In reviewing the relative availability of DBEs in our local market area, we determined that there were no local DBE firms in our area. As such, we decided to expand our market area to include the entire State of Texas. We searched for companies certified as DBEs under the Texas Unified Certification Program. We also contacted airports having concessionaires to inquire if any airport currently had DBEs as a car rental concessionaire. In our search we found that there were two DBE firms that perform car rental and leasing. Therefore, our goal to reflect our statewide findings for Passenger Car Rental and Leasing is calculated as follows:

$$\text{Base Figure} = \frac{\text{Number of DBEs in Local Market}}{\text{Number of All Firms}}$$

$$\text{Base Figure} = (2/13) = 15\%$$

The DBE goal for this concession agreement is 15%.

DEFINITIONS

Affiliation has the same meaning the term has in regulations of the Small Business Administration, 13 CFR part 121. Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly

- (a) One concern controls or has the power to control the other, or
- (b) A third party or parties controls or has the power to control both, or
- (c) An “identity of interest” between or among parties exists such that affiliation may be found.

In determining whether affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships.

Commercially useful function – A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials, and supplies used on the contract, for negotiating price, ordering the material, and installing (where applicable) and paying for the material itself.

Concession means a for profit business enterprise, located on an airport subject to Subpart F of 49 CFR part 23, that is engaged in the sale of consumer goods or services to the public under an agreement with the City of San Antonio (“sponsor or recipient”), another concessionaire, or the owner of a terminal, if other than the sponsor.

- (a) Appendix A to Subpart F of 49 CFR part 23 contains a listing of the types of businesses that are frequently operated as concessions.
- (b) Examples of entities that do not meet the definition of a concession include suppliers, flight kitchens and in-flight caterers servicing air carriers, government agencies, industrial plants, farm leases, individuals leasing hangar space, custodial and security contracts, individual taxis with permits, telephone and electric utilities, skycap services under contract with an air carrier, and management contracts.
- (c) Concessions may be operated under the following types of agreements:
 - (1) Leases.
 - (2) Subleases.
 - (3) Permits.
 - (4) Contracts.
 - (5) Other instruments or arrangements.

Concessionaire means one who operates a concession.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor means one who participates, through a contract or subcontract (at any tier) in a DOT assisted highway, transit, or airport program.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged Business Enterprise or DBE means a for profit small business concern*--

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

* Subpart F, of 49 CFR Part 23, defines a small business concern for DBE concessionaires;
Subpart A, Section 26.5, of 49 CFR Part 26, defines a small business concern for a DBE that is not a concessionaire.

Good faith efforts mean efforts to achieve a DBE goal or other requirements of Parts 23 and 26, which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirements.

Joint Venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Personal Net Worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm, or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse. (Note: Disadvantaged owners of airport concessionaires are not required to submit PNW statements at this time).

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the

- Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia or Hong Kong;
- (v) "Subcontinent Asian American," which includes persons who origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Sponsor means the recipient of an FAA grant.

COUNTING JOINT VENTURES

Joint Ventures do not have to be fifty-one percent (51%) DBE owned in order to be counted toward the participation goal. *Joint ventures that do not include any DBE firms will not count toward the goal.* A joint venture with ownership of DBE partners in any percentage will be counted for that percentage equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces, *(provided the DBE ownership is real and substantial and the DBEs are performing a commercially useful function).*

The required documentation to be submitted to the City, along with the proposal, for Joint Ventures with DBE partners shall include:

- a. The Joint Venture Agreement for the specific contract including a detailed statement of ownership.
- b. Corporate resolutions or other documents authorizing the firms to enter into the Joint Venture.
- c. A description of the work to be performed by all the Joint Venture Partners.
- d. Proof of current certification status of the individual DBE venture partners (Certification must be from a firm that has been certified by one of the six certifying agencies of the Texas Unified Certification Program (TUCP). The six agencies are: Texas Department of Transportation (TxDot), North Central Texas Regional Certification Agency (NCTRCA), South Central Texas Regional Certification Agency (SCTRCA), City of Houston, City of Austin, and Corpus Christi Regional Transportation Authority. Each certifying entity will maintain and process all DBE applications in their designated area throughout the state.

A certification must take place before the proposal due date. The certification action must be completed by this date in order for the firm's proposed work on the particular contract to be credited toward the DBE goal. It is not enough for the application to have been submitted by the deadline. Proof of DBE certification by the SCTRCA or the other five certifying entities of the TUCP must be submitted at the time of the proposal due date.)

GOOD FAITH EFFORTS

A proposer is to submit a DBE Good Faith Effort Plan (Form 1) indicating how the good faith efforts were made to achieve the goal. The proposer must submit a good faith effort plan and submitted documented "good faith efforts" regardless of meeting DBE goal.

All proposers shall submit the following:

1. A Federal DBE Good Faith Effort Plan Documenting the Good Faith Efforts (DBE Form 1),
2. The Demonstration of Good Faith Efforts (DBE Form 2),
3. List of VENDORS to be Utilized (DBE Concession Form 3),

If the above referenced documents are not completed and signed (Forms 1 through 3) by the proposer, the proposal will be considered non-responsive.

The proposer shall demonstrate to the satisfaction of the DBE Liaison, that sufficient efforts have been made to achieve the goal. The requirements for demonstrating "good faith efforts" are set forth as follows:

1. Written notices to DBEs contacted by the proposer for specific scopes of work identified by the proposer for subcontracting opportunities or for purchases of goods and services from certified DBEs prior to proposal due date.
2. Attendance at a pre-proposal conference, if any, scheduled by the City to inform DBEs of concession opportunities under a given solicitation.
3. Efforts made to define additional elements of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the goal.
4. For those DBES responding affirmatively in writing to the notice required by Item (1) above,
 - (a) reasons why agreements were not reached, including written explanation for rejection of bids;
 - (b) if additional elements of work have been identified by the proposer as available for subcontracting, the proposer shall contact the Department of Economic Development or the Aviation's DBE Liaison to ascertain the availability of DBE firms in those areas.
5. Seeking the assistance of the Aviation's DBE Liaison or the Department of Economic Development in contacting DBEs.
6. In addition, all proposers will be required to submit the following information with the proposal:
 - (a) The names and addresses of DBE firms that will participate in the contract;
 - (b) A description of the work that each DBE will perform
 - (c) The dollar amount of the participation of each DBE firm participating

EVALUATION OF GOOD FAITH EFFORTS

The good faith effort of a proposer will be evaluated by the DBE Liaison to determine whether “sufficient” good faith efforts to obtain DBE participation were made.

The following is a list of types of actions, which the DBE Liaison may consider as part of the proposer’s good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

Criteria used to evaluate “Good Faith Efforts” are as follows:

1. Soliciting through all reasonable and available means (e.g. attendance at pre-proposal conferences, advertising and/or written notices) the interest of certified DBEs who have the capability to perform the work of the contract. The proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the proposer might otherwise prefer to perform these work items with its own forces.
- 3.(a) Negotiating in good faith with interested DBEs. It is the proposer’s responsibility to make a portion of the work available to DBE subcontractors and/or suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and/or suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting or purchases; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- (b) A proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goal into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a concessionaire to perform the work of a concession with its own organization does not relieve the proposer of the responsibility to make good faith efforts. Concessionaire is not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

4. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The concessionaire's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the concessionaire's efforts to meet the project goal.
5. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
6. In determining whether a proposer has made good faith efforts, the DBE Liaison may take into account the performance of other proposers in meeting the concession goal. For example, when the apparent successful proposer fails to meet the concession goal, but others meet it, the DBE Liaison may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful proposer could have met the goal. If the apparent successful proposer fails to meet the goal, but meets or exceeds the average DBE participation obtained by other proposers, the City may view this, in conjunction with other factors, as evidence of the apparent successful proposer having made good faith efforts.

RECONSIDERATION MECHANISM

The Aviation Department's DBE Liaison will evaluate the "good faith efforts" of a firm. If after reviewing the good faith efforts submitted by Proposer, the DBE Liaison determines that the Proposer has failed to adequately document its good faith efforts, then the Proposer shall have the opportunity to provide written documentation or argument, to the Aviation Director, concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Proposer will have the opportunity to meet in person with the Aviation Director to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Aviation Director will provide a written decision on reconsideration explaining the basis of his decision. In cases of dispute, the final decision in determining whether Good Faith Efforts have been made rests with the Aviation Director.

The Aviation Director may determine that the efforts of the Proposer substantially comply with the purpose of this program and such determination is in the best interest of the DBE Program and the City. However, if the Aviation Director determines that the Proposer did not make good faith efforts to meet the goal, the decision is not administratively appealable to the Department of Transportation.

**SAN ANTONIO INTERNATIONAL AIRPORT
CONCESSION DBE PROGRAM
DBE GOOD FAITH EFFORT PLAN
FOR DOCUMENTING GOOD FAITH EFFORTS**

NAME OF PROPOSER:

1. Please list all the firms that were notified of opportunities to subcontract and/or for the purchase of goods and services. Please include copies of written notices to DBEs contacted by the proposer. Such notices shall include information on the plans, specifications and scope of work, including but not limited to supply opportunities and the deadline for submission of interest in teaming.

NAME OF COMPANY	DATE WRITTEN NOTICE WAS SENT AND METHOD (LETTER, Fax)	SCOPE OF WORK TO BE PERFORMED BY FIRM	DID DBE SUBMIT WRITTEN RESPONSE ? (Yes/No)	IF DBE RESPONDED, REASON AGREEMENT WAS NOT REACHED.
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

2. Did you attend the pre-proposal conference scheduled by the City for this concession? __ Y
__ N

3. List all DBE listings or directories, contractor associations, and/or any other associations utilized to solicit DBE subcontractors/suppliers:

4. Discuss efforts made to define additional elements of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the goals:

5. Indicate advertisement mediums used for soliciting bids from DBEs. (Please attach a copy of the advertisement(s):

6. Provide any other information which explains the process your company undertook to meet the goals for this concession

7. Name and phone number of person appointed to coordinate and administer the Federal DBE Good Faith Efforts of your company on this project.

Name: -----

Title: -----

Phone Number: -----

AFFIRMATION

I HEREBY AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

NAME AND TITLE OF AUTHORIZED OFFICIAL: _____

SIGNATURE: _____ DATE: _____

The Federal DBE Good Faith Efforts Plan is subject to the review by the Aviation Department's DBE Liaison and final approval in determining whether Good Faith Efforts have been made rests with the Aviation Director.

FOR SAN ANTONIO INTERNATIONAL AIRPORT USE ONLY:

Plan Reviewed by _____ Date: _____
Signature of DBE Liaison

Recommendation: Approval: _____ Denial: _____

**SAN ANTONIO INTERNATIONAL AIRPORT
CONCESSION DBE PROGRAM
DEMONSTRATION OF GOOD FAITH EFFORTS**

The undersigned proposer has satisfied the requirements of the Request for Proposal in the following manner (please check the appropriate space[s]):

_____ The proposer is committed to a minimum of _____% DBE utilization on this concession.

_____ The proposer is unable to meet the DBE goal of _____% and is committed to a minimum of _____% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

_____ The proposer is a certified DBE. (Proof of certification must be submitted at the time of the proposal due date.) *(Even though the proposer is a certified DBE, the proposer is not relieved of the responsibility to make good faith efforts.)*

Type of Concession: _____

Name of Proposer's Firm: _____

By: _____
Signature of Authorized Representative

Title

Date

**SAN ANTONIO INTERNATIONAL AIRPORT
FEDERAL DBE PROGRAM
LIST OF VENDORS TO BE UTILIZED**

Type of Concession:

Name of Proposer's Firm:

The above named proposer as part of the procedures for the above referenced concession, submits the following **list of all vendors** to be utilized in the performance of work to be done on said referenced concession.

NAME OF COMPANY	IS FIRM A SUBCONTRACTOR, SUPPLIER OR SERVICE PROVIDER	DESCRIPTION OF WORK/SUPPLIES/SERVICE S TO BE PERFORMED/PROVIDED BY FIRM	IS FIRM DBE CERTIFIED YES or NO?	ESTIMATED \$ OF WORK/SUPPLIES OR SERVICES TO BE PERFORMED/ PROVIDED BY FIRM
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

(Please attach additional sheets if necessary)

All DBE vendors must submit proof of certification by one of the six certifying agencies of the TUCP through the Proposer. It is understood and agreed that, if awarded a contract by the City of San Antonio, the Concessionaire will not make deletions, or substitutions to this certified list without consent of the Director of Aviation (through the submittal of DBE Form 5, CHANGE OF VENDORS). In order to determine if a proposer utilizing the vendors listed above, the Aviation Department will verify each concessionaire's DBE participation on a quarterly basis throughout the term of the Agreement through the submittal of a Quarterly Purchase Activity Report (DBE Form 5) for the purchases of goods and services made during each quarter throughout the term of the Agreement.

AFFIRMATION

DBE Form 3 – CONCESSION

LIST OF VENDORS TO BE UTILIZED

I HEREBY AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

NAME AND TITLE OF AUTHORIZED OFFICIAL:_____

SIGNATURE:_____DATE:_____

**SAN ANTONIO INTERNATIONAL AIRPORT
CONCESSIONS DBE PROGRAM
CHANGE OF VENDORS**

TYPE OF CONCESSION: _____

Name of Concessionaire: _____

The above named Concessionaire requests approval of the following addition(s) and/or deletion(s) from the List of Vendors to be Utilized (DBE Form 3), as originally submitted as part of the proposal on the above named concession:

Delete	Name of Firm	Is firm a Subcontractor, Supplier or Service Provider	Description of Work, Supplies, Services to be Performed/ Provided by Firm	Is firm DBE Certified Yes or No?	Estimated \$ of Work, Supplies, or Services to be Performed by Firm

REASON FOR REMOVING EACH OF THE ABOVE SUBCONTRACTORS/SUPPLIERS/VENDORS: _____

Please indicate the names of the firms you wish to add, replace or substitute.

Add	Name of Firm	Is firm a Subcontractor, Supplier or Service Provider	Description of Work, Supplies, Services to be Performed/ Provided by Firm	Is firm DBE Certified Yes or No?	Estimated \$ of Work, Supplies, or Services to be Performed by Firm

1. If a DBE Subcontractor/Supplier/Vendor was deleted/terminated, was it replaced by another DBE Subcontractor/Supplier? Yes _____ No _____

AFFIRMATION

THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF, I FURTHER UNDERSTAND AND AGREE THAT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

Name & Title of Authorized Official: _____

Signature: _____

Approved: _____

DIRECTOR OF AVIATION

SAN ANTONIO INTERNATIONAL AIRPORT

It is important to check all certification expiration dates for vendors to assure you are using a currently certified vendor. In order to verify current certification, check with vendor, or Airport DBE Liaison (210) 207-3505. Please submit this form **no later than 30 days** after the end of each quarter in which the purchase was made. Please attach copies the DBE certificate, issued by one of the six certifying entities of the TUCP, for each certified firm being utilized.

Tenant: _____ Address: _____

Reporting Period: _____

Vendor Name and Address	Type of Purchase	Date of Purchase	Purchase Amount	Certified As: DBE	Ethnicity	Certification Expiration Date

Confirmed by: _____

Title: _____ Date: _____

Sworn and subscribed to before me, a Notary Public in and for the County of Bexar, San Antonio, Texas on this _____ day of _____ 20____.

Notary Public

My commission expires _____

EXHIBIT 5
RANKING METHODOLOGY
CAR RENTAL TERMINAL COUNTERS

DEFINITIONS

Disadvantaged Business Enterprise or DBE means a for profit small business concern¹--

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

¹ Subpart F, of 49 CFR Part 23, defines a small business concern for DBE concessionaires.

Subpart A, Section 26.5, of 49 CFR Part 26, defines a small business concern for a DBE that is not a concessionaire.

An eligible DBE is a firm that has been certified by one of the six certifying agencies of the Texas Unified Certification Program (TUCP). The six agencies are: Texas Department of Transportation (TXDOT), North Central Texas Regional Certification Agency (NCTRCA), South Central Texas Regional Certification Agency (SCTRCA), City of Houston, City of Austin, and Corpus Christi Regional Transportation Authority. Each certifying entity will maintain and process all DBE applications in its designated area throughout the State.

For purposes of this exhibit, the *DBE Ownership calculation* will be based on the percentage of business ownership held by one or more individuals or firms certified by one of the six certifying agencies of the TUCP. The percentage will be multiplied by the proposed minimum annual guarantees for the three year term of the Agreement multiplied by a factor of 10.

DBE Purchase Minimum – the sum of the proposed DBE purchases of goods and services during the first year of the Agreement.

DBE Purchases – the sum of the actual purchases of goods and services from certified DBEs reported on the Purchase Activity Reports for each contract year.

Joint Venture means an association of a DBE firm and one or more other firms to carry out a single, for profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES (hereinafter collectively referred to as “DBE Participation”).

As an incentive for proposers to meet City objectives, counter locations within the terminal buildings will be based on a combination of minimum annual guarantees, DBE ownership (if applicable) and DBE purchases.

The proposer with the highest combined dollar amount (Ranking Total) will have the first counter selection followed by the proposer with the second highest amount. The process will continue until all available counters are selected for those awarded a concession contract.

The Initial Ranking Total for the first year counter locations will be calculated utilizing three factors:

- (1) the three year cumulative total of the proposed minimum annual guarantees
- (2) the cumulative total of the proposed DBE ownership and
- (3) the proposed total of the purchases of goods and services from certified DBEs for the initial contract year.

No adjustments to the Ranking Total, which increases or decreases a proposer's ranking, will be made after the commencement of any contract year. After the end of each contract year, a proposer will be reranked and a counter location revision may occur only in the event that a proposer does not either maintain its DBE ownership or attain during each year of the contract term the DBE purchase minimum proposed for each contract year.

MINIMUM ANNUAL GUARANTEE

The amount of Minimum Annual Guarantee (MAG) attributable towards the Ranking Total will be determined by multiplying the three year total by a factor of 10.

DBE OWNERSHIP

The following ownership categories qualify for DBE participation:

DBE Prime Proposer: A proposer that qualifies as a DBE will be determined to have proposed one hundred percent (100%) DBE participation. The total of its Minimum Annual Guarantee will be counted towards its ranking total.

Joint venture proposed: DBE participation proposed under a joint venture or equity partnership will be based on the percentages of proposed equity participation of each party to the enterprise (the prime proposer and the DBE partner). This percentage will be applied against the minimum annual guarantee and will be counted towards the company's ranking total.

DBE sublease proposed: DBE participation proposed through a sublease will be based on the proposed percentage of DBE participation as measured against the prime proposer's gross revenues at the Airport.

The estimate of gross revenues to be utilized for determining the amount of DBE ownership will be based on the sum of the proposed minimum annual guarantees for the three year term of the Agreement multiplied by a factor of 10.

DBE PURCHASE MINIMUM

The amount attributable to the Ranking Total will be determined by multiplying the sum of proposed purchases of goods and services from certified DBEs during the first year or subsequent years of the term of the Agreement (hereinafter referred to as the "DBE Purchase Minimum") set forth in a proposer's List of Vendors to be Utilized (DBE Form 3) by a factor of three. For purchases to qualify for DBE participation, they must be with certified DBE firms, be for the San Antonio International Airport car rental operation and can not exceed the sum of the proposed minimum annual guarantees for the three year period multiplied by a factor of 10.

RANKING TOTAL EXAMPLE

If ABC Car Rental and XYZ Car Rental were selected and awarded a concession agreement, their Initial Ranking Total would be as follows:

- ABC Car Rental is not a DBE. It has submitted a proposal that included a three year total of \$300,000 in minimum annual guarantees and a DBE Purchase Minimum of \$300,000.

- XYZ Car Rental is a 100% owned DBE firm. It submitted a proposal that included a three year total of \$150,000 in minimum annual guarantees and a DBE Purchase Minimum of \$250,000.

Initial Ranking Methodology:

Formula:

$$\text{Ranking Total} = \text{MAG} \times 10 + \text{DBE Ownership (MAG} \times \% \times 10) + \text{DBE Purchase Minimum} \times 3$$

Car Rental Company	Minimum Annual Guarantee (MAG x 10)	DBE Ownership (MAG x % x 10)	DBE Purchase Minimum (DBE Purch Min x 3)	Ranking Total	Rank
ABC	3,000,000 (300,000 x 10)	0 (300,000 x 0% x 10)	900,000 (300,000 x 3)	3,900,000	1
XYZ	\$1,500,000 + (150,000 x 10)	1,500,000 + (150,000 x 100% x 10)	\$750,000 = (250,000 x 3)	\$3,750,000	2

ANNUAL RE-EVALUATION

The City will conduct an annual re-evaluation to monitor the maintenance of DBE ownership and to determine whether the DBE Purchase Minimum has been achieved.

1. In order to determine if a proposer attained the DBE Purchase Minimum, the City will verify each proposer's DBE participation on a quarterly basis throughout the term of the Agreement. A Quarterly Purchase Activity Report (DBE Form 5) for the purchases made during each quarter shall be received by the City's Aviation Department on or before the 30th day following the end of each quarter in which the purchase was made ("Reporting Period") in the contract year. DBE purchases made during a quarter must be submitted with the Quarterly Purchase Activity Report for that quarter. The individual who is responsible for the accuracy and finality of the report must sign this report. This individual should be the individual that the proposer indicates will be responsible for administering the DBE Good Faith Efforts of your company (Item 8 on DBE Form 1).

A Quarterly Purchase Activity Report is late if it is received by the City on or after the 31st day after the end of the reporting period. DBE purchases are late if received by the City on or after the 31st day after the end of the Reporting Period in which the DBE purchases were made. In the event DBE purchases are reported late or a late Quarterly Purchase Activity Report is received for a reporting period (see Item 5 below) other than the last quarter's reporting period, then those late reported purchases and late Quarterly Purchase Activity Report will be accepted at a rate of 75% of the total purchases.

2. Only purchases from firms that have been certified as a DBE by one of the six certifying agencies of the Texas Unified Certification Program (TUCP) will be allowed.
3. New DBE owners or vendors may be substituted or added by a successful proposer during the life of the Agreement. While maximum DBE participation is encouraged, no company can change counter locations solely as a result of increasing its DBE ownership or exceeding its DBE Purchase Minimum during the contract term or extension(s) thereof. However, a proposer is eligible to lose its counter location by not maintaining sufficient levels of DBE ownership or not attaining the DBE Purchase Minimum for a contract year.
4. An initial re-ranking will be performed by the City approximately 60 days following the end of each contract year.

5. If after the initial re-ranking, it is determined that a car rental company may be required to change counter locations, an audit will be conducted to verify the DBE purchases submitted by the affected car rental companies on their Purchase Activity Reports for the contract year. *Only DBE purchases that are received by City on or before the 30th day after the end of the contract year on a Quarterly Purchase Activity Report will be accepted and considered for ranking purposes. Any DBE Purchases or Quarterly Purchase Activity Reports received by City on or after the 31st day after the end of the contract year will not be accepted or considered for ranking purposes.*
6. If the ranking of each of the then current rental car company results in a different ranking order than originally or previously determined, then any company(s) moving up in ranking may choose to relocate counter locations with a lower ranked car rental company that did not meet its DBE purchase minimum, provided such higher ranked car rental company *met or exceeded its DBE purchase minimum*. Relocation of counters, if any, based upon such re-ranking and DBE Purchase Minimums will occur within 30 days following notification by City to Concessionaire of its new location.
7. Failure by Concessionaire to relocate its counters within 30 days following such notification will be an event of default, which shall be subject to the provisions of Article XIV of this Agreement.

Annual Re-evaluation Methodology:

The annual re-evaluation for the following two companies would be as follows:

- ABC Car Rental submitted a proposal that included a total \$300,000 in minimum annual guarantees, was not a DBE firm, and during its first contract year had DBE Purchases of \$200,000. *Its DBE Purchase Minimum was \$300,000.*
- XYZ Car Rental is a 100% owned DBE firm. It submitted a proposal that included a total of \$150,000 in minimum annual guarantees and during its first contract year had DBE Purchases of \$300,000. *Its DBE Purchase Minimum was \$250,000.*

Formula:

$$\text{MAG} \times 10 \div 3 + \text{MAG} \times \% \times 10 \div 3 + \text{DBE Purchases for Contract Year (not to exceed DBE Purchase Minimum)} = \text{Ranking Total}$$

*Percentage of DBE ownership for period being evaluated, if applicable.

Car	Minimum		Total DBE Purchases (not			
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Rental Company	Annual Guarantee (MAG x 10/3)	DBE Ownership	to exceed DBE Purch Min)	Ranking Total	Initial Rank	New Rank
ABC	1,000,000 (300,000 x 10/3)	0 (300,000 x 0% x 10/3)	200,000	\$1,200,000	1	2
XYZ	\$500,000 (150,000 x 10/3)	500,000 (150,000 x 100% x 10/3)	\$250,000 ¹	\$1,250,000	2	1

¹Although, Company XYZ had DBE purchases of \$300,000, since its DBE purchase minimum was \$250,000, only \$250,000 can be counted towards its purchases. No company can move up in counter location by exceeding solely its DBE Purchase Minimum. However, Company XYZ would still be allowed to move to ABC's counter location, if it so desired, due to the following:

1. XYZ met its DBE Purchase Minimum and Company ABC did not.
2. XYZ's ranking was higher than ABC's.

EXHIBIT 6

The City of San Antonio Self-Insurance Requirements for Vehicles Permitted for Hire

For the City of San Antonio to accept self-insurance in-lieu-of a commercially purchased insurance program, you and your company in addition to meeting the State of Texas requirements for self-insurance must also meet the City of San Antonio's self-insurance requirements.

The City is willing to accept a true self-insurance program that is funded and properly serviced. To be accepted by the City as a self-insured program, the following minimum requirements must be met:

1. All vehicles permitted for hire requesting self-insurance must meet the greater of the following required limits:
 - a. \$500,000 per occurrence combined single limits or \$500,000 bodily injury per occurrence, \$100,000 property damage per occurrence, or current State of Texas Tort claims limits for a Texas Municipality, whichever is greater.

(or)

- b. Special insurance/limits required by specific contract.
2. Your company must provide the City of San Antonio a report of the financial condition of your company's dedicated loss fund annually. This report must include, but not be limited to the following:
 - a. A CPA's audited financial statement detailing your company's dedicated loss fund equal to the amount of the self-insurance your company is carrying. Along with the CPA's statement, your company must present an actuarial statement, from a qualified actuary, verifying your company's loss fund adequacy at a minimum of a seventy-five (75%) confidence rate. The City shall be notified within thirty days if your fund falls below this level. The City will have the right to independently verify this fund and its adequacy.

ATTACHMENT 11

SIGNATURE PAGE

“✓” Check box that indicates business structure of Respondent

- ☐ Individual or Proprietorship
- ☐ Partnership or Joint Venture
- ☐ Corporation

The undersigned certifies that (s)he is _____ (title) of the Respondent entity named below; that (s)he is designated to sign this Proposal Form (if a Corporation then by resolution with Certified Copy of resolution attached) for and on behalf of the entity named below, and that (s)he is authorized to execute same for and on behalf of and bind said entity to the terms and conditions provided for in the Proposal as required by this RFP, and has the requisite authority to execute an Agreement on behalf of Respondent, if awarded, and that the 11-digit Comptroller's Taxpayer Number for the entity is:

11-digit Comptroller's Taxpayer Number

Respondent Organization Name (DBA also required if Individual or Proprietorship)

By: _____

By: _____

(If Respondent is a Joint Venture, an authorized signature from a representative of each party is required)

Employer Identification Number

By signature above, Respondent agrees to the following:

1. If awarded a contract in response to this RFP, Respondent will be able and willing to execute a contract in the form shown in the RFP, as attached and set out in Attachment ____, with the understanding that the scope and compensation provisions will be negotiated and included in the final document.
2. If awarded a contract in response to this RFP, Respondent will be able and willing to comply with the insurance and indemnification requirements set out in Attachments ____ & ____.
3. If awarded a contract in response to this RFP, Respondent will be able and willing to comply with all representations made by Respondent in Respondent's Proposal and during Proposal process.
4. Respondent has fully and truthfully submitted a Litigation Disclosure form with the understanding that failure to disclose the required information may result in disqualification of proposal from consideration.
5. Respondent agrees to fully and truthfully submit a General Questionnaire and with understanding failure to fully disclose requested information may result in disqualification of proposal from consideration or termination of contract, once awarded.

ATTACHMENT 12

PROPOSAL CHECKLIST

This checklist is to help the Respondent ensure that all required documents have been included in its proposal.

Document	Check or Initial to Indicate Document is Attached to Proposal
Proposal Security	
Proposed Privilege Fee (Attachment 2 in RFP)	
Respondent Qualification General Questionnaire (Attachment 3 in RFP)	
*Discretionary Contracts Disclosure (Attachment 4 in RFP)	
Litigation Disclosure (Attachment 5 in RFP)	
Small Business Economic Advocacy Requirements (Attachment 6 in RFP)	
*Good Faith Effort Plan (Attachment 6 in RFP)	
Federal DBE Program Requirements (Attachment 7 in RFP)	
*Annual Financial Statement	
Proposal Checklist (Attachment 12)	
*Signature Page (Attachment 11)	
10 Copies of Proposal	

***Documents marked with an asterisk on this checklist require a signature. Be sure they are signed prior to submittal of proposal.**